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Sup Ct

TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1947

No. 51

JOHN HARVEY HALEY, PETITIONER,

vs.

THE STATE OF OHIO

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE
OF OHIO

PETITION FOR CERTIORARI FILED MARCH 12, 1947.

CERTIORARI GRANTED JUNE 18, 1947.

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1947

No. 51

JOHN HARVEY HALEY, PETITIONER,

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OF OHIO

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[fol. 1]

**IN THE COURT OF COMMON PLEAS OF STARK
COUNTY DIVISION OF DOMESTIC RELATIONS,
JUVENILE DEPARTMENT**

Case No. 12784

In the Matter of JOHN HALEY, a Delinquent Child

DOCKET AND JOURNAL ENTRIES

Oct. 23, 1945. Affidavit filed charging said child with being a delinquent child in that he so deports himself as to injure and endanger the morals and health of himself and others.

Oct. 23, 1945. Order for Citation filed. Jr. No. 18, p. 97. The complaint of Sgt. Joseph Scrimeo being filed herein, that John Haley is a delinquent child and that Will and Susan Haley residing at 1131 Liberty Ave. S. E., Canton, Ohio, have the custody of said child and that they are the parents of said child; it is ordered that said complaint be set for hearing and that a citation issue for said child, the party having custody thereof, and said parents, directed to the probation officer of this county.

Thomas H. Leahy, Judge.

Oct. 29, 1945. Precipe for Subpoena issued and Citations issued.

Oct. 29, 1945. Journal Entry filed. Jr. No. 18, p. 106. This day this cause came on to be heard on the oral motion of the Prosecuting Attorney for an order for the appointment of a competent person to make a physical and mental examination of the defendant under Section 1639-32 of the General Code of Ohio; Coming now to consideration of the [fol. 2] motion, the Court finds that said motion is well taken and further finds that Dr. William H. Jacobson, 822 Cleveland Ave. N. W., Canton, Ohio, is a competent person to make such examination, it is therefore Ordered by the Court that the said Dr. Jacobson proceed forthwith to make a mental and physical examination of the defendant and report his findings to this Court.

Thomas H. Leahy, Judge.

Nov. 1st, 1945. Mental and Physical examination filed.

Nov. 1st, 1945. Journal Entry filed. Jr. No. 18, p. 112.

This day this matter came on for hearing, and it appearing to the Court that the said child has committed an act which, if — had been committed by an adult, would be a felony; an examination having been made of the said John Haley by a competent physician, qualified to make such examination, it is ordered that the said John Haley shall personally be and appear before the Court of Common Pleas on the first day of the next term thereof to answer for such act.

It is further ordered that a transcript of the proceedings herein be forthwith filed with the Clerk of the Court of Common Pleas for further proceedings as provided by law.

Thomas H. Leahy, Judge.

[fol. 3] IN THE COURT OF COMMON PLEAS OF STARK COUNTY

Docket No. 24, Page No. 13978.

STATE OF OHIO

vs.

JOHN HARRY HALEY

Indictment for First Degree Murder

DOCKET AND JOURNAL ENTRIES

Be it remembered that heretofore, to-wit, on the 14th day of November A. D. 1945 there was duly filed in the Clerk's office of said Court a certain transcript in this cause from the docket of the Juvenile Court, Stark County, Ohio, which transcript reads and is in the words and figures following, to-wit:

Transcript Filed

(See Transcript.) And afterwards at a term of the Court of Common Pleas begun and held at the Court House in the City of Canton within and for the County of Stark and State of Ohio on the 7th day of January A. D. 1946, the Grand Jurors within and for the body of the County of Stark being called came, to-wit: Joseph C. Snyder, Ruth Youchum, Mollie E. Wood, Irene B. Meeks, Mary Elizabeth Supej, Charles T. Plastow, James A. Delap, Dorothy Jane Best, Andrew Stolarik, Hilda Wilhelm, Fred R. Troscher,

Fred A. Blake, James H. Rheamount, Edward Cironi and Norman E. Ginther. Whereupon the Court appointed Joseph C. Snyder, Foreman of the said Grand Jury. And the said Grand Jurors having been duly sworn, and having received a charge from the Court retired to deliberate. Afterwards at this same term of Court continued and held on the 8th day of January A. D. 1946 the said Grand Jurors [fol. 4] came again into the court and present by their foreman the following Bill of Indictment, to-wit:

Indictment Filed

Indictment for First Degree Murder. (Felony.) The State of Ohio, Stark County, ss: In the Court of Common Pleas, Stark County, Ohio, of the Term of January in the year of our Lord one thousand nine hundred and forty-six. The Jurors of the Grand Jury of the County of Stark and State of Ohio, then and there duly impaneled, sworn and charged to inquire of and present all offenses whatever committed within the limits of said County, on their said oaths, in the name and by the authority of the State of Ohio, do find and present: That John Harry Haley late of said County on or about the 14th day of October in the year of our Lord one thousand nine hundred and forty-five, at the County of Stark, aforesaid, did unlawfully, purposely and while attempting to perpetrate robbery, kill one William Karam, then and there being, contrary to the statute in such cause made and provided, and against the peace and dignity of the State of Ohio. D. Deane McLaughlin, Prosecuting Attorney, Stark County, Ohio. (Endorsed: A True Bill.) And afterwards at this same term and date there was duly issued from the Clerk's office of said Court to the Sheriff of Stark County, a duly certified copy of the foregoing Bill of Indictment in this cause. And afterwards on the 9th day of January A. D. 1946, the Sheriff of Stark County duly made his return to the Clerk's Office of said Court of the service of the aforesaid copy of the Bill of Indictment issued to him, which return reads and is in the words and figures following, to-wit:

Indictment Returned

Sheriff's Return: On 1/9/45, I delivered personally to the within named, John Harry Haley, a true and certified copy of this indictment, with all endorsements thereon.

Dick France, Sheriff. Afterwards at a term of said Court of Common Pleas begun and held at the Court House in the City of Canton within and for the County of Stark and State of Ohio on the 7th day of January A. D. 1946 and [fol. 5] continued and held on the 11th day of January A. D. 1946, there was entered in the Journal of said Court the following order, to-wit:

Journal Entry W/9 295

This day came the defendant, John Harvey Haley into open Court, in the custody of the Sheriff, accompanied by his counsel, E. L. Mills and E. W. Jones, Esq.; whereupon said defendant having heretofore been duly served with copy of the indictment, waived reading of the indictment, and was duly arraigned upon the indictment herein, and was asked by the Court whether he is guilty or not guilty of crime of First Degree Murder as charged in the indictment, to which inquiry the defendant replied that he is Not Guilty. Frank N. Sweitzer, Judge. Afterwards at this same term of Court continued and held on the 7th day of February A. D. 1946, there was entered in the Journal of said Court the following order, to-wit:

Journal Entry W/9 393

At the request of the Prosecuting Attorney the stenographer is hereby requested to furnish the said Prosecuting Attorney with a transcript of the Grand Jury testimony taken in the above entitled cases on January 7, 1946. And it appearing that pursuant to such request the stenographer has furnished the Prosecuting Attorney with the above transcript, the entry for the same is hereby approved. D. Deane McLaughlin, Prosecuting Attorney. Afterwards at this same term of Court continued and held on the 18th day of February A. D. 1946, there was entered in the Journal of said Court the following order, to-wit:

Journal Entry W/9 410

Upon motion of the Prosecuting Attorney and in accordance with Section 13442-1 of the General Code of Ohio, the following matter is hereby set for trial on the date hereinafter set forth: 13978, 3-25-46, 9:00 A. M. John Harvey Haley. First Degree Murder. E. W. Mills and E. W. Jones. Frank N. Sweitzer, Judge. And afterwards on the

21st day of February A. D. 1946, there was duly filed in the Clerk's office of said Court a certain Motion and Brief in this cause, which Motion reads and is in the words and figures following, to-wit:

[fol. 6] Motion Filed

Now comes the defendant, by his attorneys, and moves the court (1) To vacate and set aside the order made by this court on February 18, 1946, recorded in Journal W/9, page 410, of the Journal of this Court, which said order fixed a trial date of March 25, 1946 for this cause, a date of March 18, 1946 for the case of "The State of Ohio vs. Parks," No. 13980, and a date of April 1, 1946 for the case of "The State of Ohio vs. Lowder," No. 13979, for the reason that said order was made without notice to defendant and his counsel, and defendant was deprived of any opportunity to be heard upon said order, in violation of his Constitutional rights under the Constitution of the United States and the Constitution of the State of Ohio. (2) To advance the trial date of this cause so that it will be tried prior to the case of "The State of Ohio vs. Lowder," No. 13979, and prior to the case of "The State of Ohio vs. Parks," No. 13980, or, in the alternative, to continue the case of "The State of Ohio vs. Lowder," No. 13979, and the case of "The State of Ohio vs. Parks," No. 13980, so that said cases will be tried after this cause. Amerman, Mills, Mills, Jones & Mansfield, Attorneys for Defendant.

Brief Filed

(See Brief) And afterwards on the 25th day of February A. D. 1946, there was duly filed in the Clerk's office of said Court a certain Memorandum of Ruling in this cause.

Memorandum Filed

(See Memorandum of Ruling on Defendant's Motion to Vacate Entry). Afterwards at this same term of Court continued and held on the 25th day of February A. D. 1946, there was entered in the Journal of said Court the following order, to-wit:

Journal Entry W/9 418

At the request of the court, the stenographer is hereby entitled to furnish to the court a transcript of the court's

memorandum of ruling on defendant's motion to vacate entry, together with four carbon copies thereof. And it appearing to the court that the stenographer has furnished said transcript, together with four carbon copies thereof, [fol. 7] the entry for the same is hereby approved. Frank N. Sweitzer, Judge of the Court of Common Pleas. Afterwards at this same term of Court continued and held on the 26th day of February A. D. 1946, there was entered in the Journal of said Court the following order, to-wit:

Journal Entry W/9 421

This cause came on to be heard on the motion filed by the defendant herein to vacate and set aside the order made by this Court on February 18, 1946, and recorded in Journal W/9, page 410 of the Journal of this Court, which said order fixed the trial of March 25, 1946, for this cause. Whereupon this cause having been considered by the Court said order is ordered vacated and expunged. Frank N. Sweitzer, Judge. Approved: Amerman, Mills, Mills, Jones & Mansfield, Attorneys for Defendant. And afterwards on the 26th day of February A. D. 1946 there was duly filed in the Clerk's office of said Court a certain Motion in this cause, which Motion reads and is in the the words and figures following, to-wit:

Motion Filed

Now comes the Prosecuting Attorney and respectfully moves the court in accordance with Section #13442-1, to set the following criminal case for trial—#13978—State of Ohio vs. John Harvey Haley—First Degree Murder. D. Deane McLaughlin, Prosecuting Attorney. Notice: the above motion will be on for hearing on Wednesday, February 27, 1946, at 10:00 A. M., in Courtroom #2 before the Hon. Frank N. Sweitzer, Defendant will take due notice thereof. Feb. 26, 1946. Receipt is hereby acknowledged of a copy of said motion and notice. E. L. Mills, Attorney for defendant, John Harvey Haley. Afterwards at this same term of Court continued and held on the 2nd day of March A. D. 1946, there was entered in the Journal of said Court the following order, to-wit:

Journal Entry W/9 436

Upon motion of the Prosecuting Attorney and in accordance with Section 13442-1 of the General Code of Ohio, the

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following matter is hereby set for trial on the date herein-
[fol. 8] after set forth; #13978 John Harvey Haley—First
Degree Murder. Attys. E. L. Mills and E. W. Jones. Set
for trial March 25, 1946 at 9:00 o'clock A. M. Frank N.
Sweitzer, Judge. Afterwards at this same term of Court
continued and held on the 2nd day of March A. D. 1946,
there was entered in the Journal of said Court the following
order, to-wit:

Journal Entry W/9 436

To the Clerk: Now comes D. Deane McLaughlin, Prosec-
uting Attorney of Stark County, Ohio and requests the
Clerk of Courts of said County to draw seventy-five (75)
ballots from the jury wheel, and to issue to the Sheriff of
said Stark County a venire for the persons who are to be
drawn to serve as jurors in the trial of the above entitled
case as provided by law for the 25th day of March 1946,
at nine o'clock A. M., the time heretofore fixed for the
trial of this cause. D. Deane McLaughlin. Afterwards
at this same term of Court continued and held on the 2nd
day of March A. D. 1946, there was entered in the Journal
of said Court the following order, to-wit:

Journal Entry W/9 437

Upon motion of the Prosecuting Attorney, and for good
cause shewn the court orders the Clerk to draw from the
jury wheel seventy-five (75) ballots, and issue to the Sheriff
a venire for the persons whose names are so drawn for the
25th day of March, 1946, at nine o'clock A. M. Frank N.
Sweitzer, Judge. Afterwards at this same term of Court
continued and held on the 2nd day of March A. D. 1946,
there was entered in the Journal of said Court the following
order, to-wit:

Journal Entry W/9 437

This day came the defendant, John Harvey Haley, into
open Court, in the custody of the Sheriff, accompanied
by his counsel E. L. Mills, Esq., and E. W. Jones, Esq.,
whereupon, the Prosecuting Attorney having previously
filed in the office of the Clerk of Courts his praecipe for a
jury of seventy-five (75) qualified persons to be and appear
before this court on the 25th day of March 1946, at nine
o'clock A. M., at the Court House in said county, pursuant

to the order of the Court heretofore made, the Clerk in [fols. 9-10] the presence of the court and in the presence of Dick France, Sheriff of Stark County, and in the presence of the defendant, and his counsel, drew from the jury wheel as provided by law, seventy-five (75) names, to-wit:

[fols. 11-13] and thereupon the said Clerk issued to the said Sheriff a venire facias to summon the persons so drawn to appear before our said court on the 25th day of March 1946, at nine o'clock A. M., at the Court House in the said county then and there to act as jurors in the said cause; and of the said venire to make due return according to law on or before the 8th day of March, 1946. Frank N. Sweitzer, Judge. Afterwards at this same term of Court continued and held on the 8th day of March A. D. 1946, there was entered in the Journal of said Court the following order, to-wit:

[fol. 14] Journal Entry W/9 474

This day came the defendant John Harvey Haley, into open court in the custody of the Sheriff, accompanied by his counsel E. L. Mills, Esq., and Edgar W. Jones, Esq., and it appearing that the Sheriff has duly summoned the panel of the jury in the above entitled cause pursuant to the venire issued for such jury and has made return upon said venire showing such service, a copy of said venire with the return of the Sheriff thereon was delivered to the defendant in open court, said panel as shown by said venire being as follows:

1. Joseph R. Freifield, 527 21st St., NW., Canton Ohio
2. Ruth Paisley, 1737 Huron Rd., Massillon, Ohio
3. Charles DeHoff, Paris-East Canton Rd., R#1 East Canton, Ohio
4. Alice Lucille Jellison, 808 Young Ave., NE., Canton, Ohio
5. Roy J. Knox, 1404 Bedford Ave., SW., Canton, Ohio
6. Clement L. DeVille, 1351 South Seneca Ave., Alliance, Ohio
7. Henry Bacher, 1310 Henry Ave. SW., Canton, Ohio
8. Bernice B. Wissler, 1332 9th St. NW., Canton, Ohio
9. Allen Strouble, R#2, Louisville, Ohio

10. Frances Daily, 213 McKinley St., North Canton, Ohio
11. Gladys Knouff, R#3 Louisville, Ohio
12. Bernice Adams, R#3, Louisville, Ohio
13. Larna M. Frank, 200 Broad Ave., NW., Canton, Ohio
14. J. W. Taylor, R#2, Alliance, Ohio
15. Edna Sheetz, 916 E. Broad St., Louisville, Ohio
16. Irene I. Lamm, 500 19th St. NW., Canton, Ohio
17. Emma R. Ziegler, 1510 18th St. NW., Canton, Ohio
18. Harold V. Finney, Georgetown Rd. Ext., R#3 Canton, Ohio
19. John V. Hang, 1631 17th St. NW., Canton, Ohio
20. Erma I. Nagel, 2323 11th St. NW., Canton, Ohio
- [fol. 15] 21. Anna Sady, 161 Ute Ave., Massillon, Ohio
22. June D. Dunwoody, 2906 8th St., NW., Canton, Ohio
23. Corinne R. Spiker, 1415 17th St. NW., Canton, Ohio
24. Lucille M. Baldwin, 222 34th St. NW., Canton, Ohio
25. Loretta Ohlman, R#3, Massillon, Ohio
26. Alma Graham, 2214 3rd St. SE., Canton, Ohio
27. Ernest M. Turner, 1451 Harmont Ave. NE., Canton, Ohio
28. Leo P. Gulling, 412 East Broad St., Louisville, Ohio
29. Walter H. Jacob, 1710 Walden Ave. NW., Canton, Ohio
30. Russell J. Adams, Y. M. C. A., Canton, Ohio
31. Emmett J. McCreary, 408 4th St. NW., Canton, Ohio
32. Charles H. Wiley, Mill Road Ext. SE., R#5 Canton, Ohio
33. Ada S. Heckendorn, 216 15th St. NW., Massillon, Ohio
34. Hugh Kenneth Bagent, North Industry, Ohio
35. Victor L. Harsh, 3105 Malvern Ct. NW., Canton, Ohio
36. Russell Miller, 7th St. off Woodside Ave., R#6 North Canton, Ohio
37. Opal Klick, East Walnut St. Ext., R#4 Massillon, Ohio
38. Albert Monnard, 602 Broad Ave. NW., Canton, Ohio
39. Viola M. Maxson, 195 Dwight Ave. SE., Massillon, Ohio
40. Ralph L. Wilson, 301 21st St. NW., Canton, Ohio
41. Grace E. Hill, 3130 Dewey Pl. SW., Canton, Ohio
42. Orvil J. Marsh, 906 Linwood Ave. SW., Canton, Ohio
43. Hilda L. King, 2112 Winfield Way NE., Canton, Ohio
44. Weymond D. Hendershot, 69 Marion Ave. S., Massillon, Ohio

45. Mildred F. Tracey, 1411 11th St. NE., Massillon, Ohio
46. Michael Milano, 3031 25th St. NW., Canton, Ohio.
47. Marie A. Tope, 2921 8th St. SW., Canton, Ohio
48. Larna Gallagher, 923 Troy Pl. NW., Canton, Ohio
49. Valier J. Packer, 1102 South Freedom Ave., Alliance, Ohio
- Bruno Cekansky, 1237 Clarendon Ave. SW., Canton, Ohio
51. Martin Kelp, 1440 Plain Ave. NE., Canton, Ohio
52. Paul J. Hagan, 328 28th St. SW., Canton, Ohio
53. Nellie F. Thompson, 1337 Heising Ct. SW., Canton, Ohio
54. Eva L. Barclay, 819 Irvington Ave. NE., Massillon, Ohio
- [fols. 16-17] 55. Esther G. Westfall, State Route 63 R#1 Navarre, Ohio
56. William H. Brett, 115 Vincent Ave., Alliance, Ohio
57. Charles Mosbaugh, Bowman Road R#1 Magnolia, Ohio
58. Jennie/Marie Van Horn, 2739 Mahoning Rd. NE., Canton, Ohio
59. Allie B. Clark, 146 Saratoga Ave. SW., Canton, Ohio
60. Koyt, Bacon, Anderson Rd. R#1 Homeworth, Ohio
61. Ruth Krabill, State Route 44 R#1 East Canton, Ohio
62. Phillip C. Fleischer, Jr., 1402 Logan Ave. NW., Canton, Ohio
63. John A. Haas, 1131 Shadyside Ave. SW., Canton, Ohio
64. Bert G. Robinson, R#3, Louisville, Ohio
65. Florence G. Smith, 802 East Main St., Louisville, Ohio
66. Frank J. Racki, 1510 South Liberty Ave., Alliance, Ohio
67. Mabel M. Ankrim, East Beach Rd., R#3 Alliance, Ohio.

It further appears to the court from the Sheriff's return that eight (8) members of such venire, to-wit:

- Edward Willis, 1013 Gibbs Ave., NE., Canton, Ohio
- Clifford L. Stoffer, 622 Dueber Ave., SW., Canton, Ohio
- Thurman E. Ullman, R#1, Canal Fulton, Ohio
- Iver H. Lundgren, 644 Wertz Ave. SW., Canton, Ohio
- Ray C. Taylor, R#4, Canton, Ohio
- Letha Coffield, 1636 Bedford Ave. SW., Canton, Ohio

Mabel M. Walker, West of Route 80, off Georgetown,
R#1, Paris, Ohio

Elizabeth Pocock, 414 Prospect St., Minerva, Ohio

were not found in Stark County, Ohio. This order was made March 8, 1946 and the ordered entry to be made as of March 8, 1946. Frank N. Sweitzer, Judge. And afterwards at this same term of Court continued and held on the 26th day of March A. D. 1946 there was entered in the Journal of said Court the following order, to-wit:

[fol. 18] Journal Entry W/9 506

This day came, W. Bernard Rogers, Esq., and John Rossetti, Esq., Assistant Prosecuting Attorneys on behalf of the State of Ohio and the defendant, John Harry Haley with his counsel, E. L. Mills, Esq., and E. W. Jones, Esq., also came the following named jurors, to-wit: Walter H. Jacob, Hilda L. King, Loretta Ohlman, Paul Hagan, Ralph L. Wilson, Corinne R. Spilker, Anna Sady, Ada S. Heckendorn, Irene I. Lamm, Florence G. Smith, Duane M. Kibler, Nora [fol. 19] G. Clapper, who were duly impaneled and sworn and the said Jury having heard the testimony adduced by the parties, the argument of counsel and having received a charge from the Court retired in custody of the bailiff to deliberate and after some time came again into Court conducted by the bailiff and for verdict say: "We, the Jury impaneled and sworn to well and truly try, and true deliverance make between the State of Ohio and John Harry Haley do find the defendant John Harry Haley Guilty of Murder in the first degree as charged, but we do recommend mercy. Ralph L. Wilson, Foreman." And afterwards on the 4th day of April A. D. 1946, there was duly filed in the Clerk's office of said Court a certain Motion for New Trial in this cause, which Motion for New Trial reads and is in the words and figures following, to-wit:

Motion Filed

Now comes the defendant, John Harvey Haley, by his attorneys, and moves the court to set aside the verdict of the jury returned in this cause on the 3rd day of April, 1946, and for a new trial, for the following reasons: 1. The verdict is not sustained by sufficient evidence, is against the weight of the evidence, and is contrary to law. 2. Newly

discovered evidence material to the defendant, which the defendant could not with reasonable diligence have discovered and produced at the trial. 3. Misconduct of the prosecuting attorney. 4. Error in the admission of evidence offered by the State of Ohio. 5. Error in the exclusion of evidence offered by the defendant. 6. Error in the court's charge to the jury. 7. Error by the court in refusing to charge the jury as affirmatively requested by the defendant. 8. Irregularity in the proceedings of the court, jury and prosecuting attorney. 9. Other errors of law occurring at the trial by reason of all of which the substantial rights of the defendant were materially affected and he was prevented from having a fair trial. 10. Error in overruling defendant's motion to direct a verdict. Amerman, Mills, Mills, Jones & Mansfield, Attorneys for Defendant. See Brief. A copy of the foregoing Motion and Brief was mailed to D. D. McLaughlin, [fols. 20-21] Prosecuting Attorney of Stark County, Ohio, this 4th day of April, 1946. Amerman, Mills, Mills, Jones & Mansfield, Attorneys for Defendant. Afterwards at this same term of Court continued and held on the 8th day of April A. D. 1946, there was entered in the Journal of said Court the following order, to-wit:

[fol. 22]

Journal Entry W/9 562

This day came the defendant, John Harvey Haley, into open court, in the custody of the Sheriff, accompanied by his counsel E. L. Mills, Esq., and Edgar W. Jones, Esq., having heretofore been found Guilty by a jury of the crime of First Degree Murder as charged in the indictment; and motion for a new trial having been made, the same is overruled to the overruling of which the defendant excepts; and the Prosecuting Attorney moved that sentence be pronounced against the defendant. Whereupon the Court was duly informed in the premises on the part of the State, by the Prosecuting Attorney, and on the part of the defendant, by the defendant himself, and the defendant being inquired of if he had anything to say why the sentence of the law should not be pronounced against him, and having nothing but what already — been said, and showing no good and sufficient reason why sentence should not be pronounced, it is adjudged that the defendant John Harvey Haley, be confined in the Ohio Penitentiary at Columbus, Ohio, during the

term of his natural life, unless he shall be pardoned, paroled, or otherwise released according to law, and that he pay the costs of this prosecution for which execution is awarded. Frank N. Sweitzer, Judge. And afterwards on the 22nd day of June A. D. 1946 there was duly filed in the Clerk's office of said Court a certain Notice of Appeal in this cause, which Notice of Appeal reads and is in the words and figures following, to-wit:—

[fol. 23]

Notice of Appeal Filed

Now comes the defendant, John Harvey Haley, and given notice of Appeal to the Court of Appeals of the Fifth Appellate District of Ohio from a judgment entered in this cause by the Court of Common Pleas of Stark County, Ohio, on the 5th day of June, 1946, which said judgment of said Court of Common Pleas of Stark County, Ohio, overruled the motion of this defendant for a new trial, entered judgment upon the verdict of the Jury rendered on the 3rd day of April, 1946, and sentenced the defendant to imprisonment in the Ohio State Penitentiary for life. Said appeal is on questions of law. Amerman, Mills, Mills, Jones & Mansfield, Attorneys for Defendant. And afterwards on the 22nd day of June A. D. 1946 there was duly filed in the Clerk's office of said Court a certain Praeipe for Transcript in this cause, which Praeipe for Transcript reads and is in the words and figures following to-wit:—

Praeipe Filed

To the Clerk: Please prepare and file in the Court of Appeals of the Fifth Appellate District of Ohio, a transcript of the original papers, pleadings and docket entries in this cause. Amerman, Mills, Mills, Jones and Mansfield, Attorneys for Defendant.

Attest: C. Frank Sherrard, Clerk of Courts.

[fol. 24] Clerk's Certificate to foregoing paper omitted in printing.

[fol. 25] IN COURT OF COMMON PLEAS OF STARK COUNTY

INDICTMENT FOR FIRST DEGREE MURDER—Filed January 8,
1946

General Code, Sections 13558, -9, -71, -5, -81

(Felony)

THE STATE OF OHIO,
Stark County, ss:

In the Court of Common Pleas, Stark County, Ohio, of the Term of January in the year of our Lord one thousand nine hundred and forty-six.

The Jurors of the Grand Jury of the County of Stark and State of Ohio, then and there duly impaneled, sworn and charged to inquire of and present all offenses whatever committed within the limits of said County, on their said oaths, in the name and by the authority of the State of Ohio, do find and present:

That John Harry Haley, late of said County on or about the 14th day of October, in the year of our Lord one thousand nine hundred and forty-five, at the County of Stark, aforesaid, did unlawfully, purposely and while attempting to perpetrate robbery, kill one William Karam, then and there being, contrary to the statute in such cause made and provided, [fol. 26] and against the peace and dignity of the State of Ohio.

D. Deane McLaughlin, Prosecuting Attorney, Stark County, Ohio.

Sheriff's Return: On 1/9/46, I delivered personally to the within named, John Harry Haley, a true and certified copy of this indictment, with all endorsements thereon.

Dick France, Sheriff. 50.

THE STATE OF OHIO,
Stark County, ss:

I, C. Frank Sherrard, Clerk of the Court of Common Pleas, in and for said County, do hereby certify that the within and foregoing is a full, true and correct copy of the original indictment, together with the endorsements thereon, now on file in my office.

Witness my hand and the seal of said Court at Canton, Ohio, this 7th day of January, 1946.

C. Frank Sherrard, Clerk, by — — —, Deputy.

[Endorsed:] No. 13978, January Term, 1946. Court of Common Pleas, Stark County, Ohio. The State of Ohio vs. John Harry Haley. Indictment for First Degree Murder. A True Bill, Joseph C. Snyder, Foreman of the Grand Jury. Filed January 8, 1946, C. Frank Sherrard, D. Deane McLaughlin, Prosecuting Attorney.

[fol. 27]

[File endorsement omitted]

IN THE COURT OF COMMON PLEAS OF STARK COUNTY

[Title omitted]

ARRAIGNMENT AND PLEA—January 11, 1946

This day came the defendant, John Harvey Haley into open Court, in the custody of the Sheriff, accompanied by his counsel, E. L. Mills, E. W. Jones, Esqs.; whereupon said defendant having heretofore been duly served with copy of the indictment waived reading of the indictment, and was duly arraigned upon the indictment herein, and was asked by the Court whether he is guilty or not guilty of the crime of First Degree Murder as charged in the indictment, to which inquiry the defendant replied that he is not guilty.

1-11-1946.

Frank N. Sweitzer, Judge.

[fols. 28-30] IN COURT OF COMMON PLEAS OF STARK COUNTY,
JANUARY TERM A. D., 1946

Criminal Action. #13978

THE STATE OF OHIO, Plaintiff,
against

JOHN HARRY HALEY, Defendant

VERDICT—Filed April 3, 1946

We, the Jury impaneled and sworn to well and truly try, and true deliverance make between the State of Ohio and

John Harry Haley, do find the defendant John Harry Haley Guilty of Murder in the first degree as charged, but we do recommend mercy.

Ralph L. Wilson, Foreman.

[fol. 31]

[File endorsement omitted]

IN THE COURT OF COMMON PLEAS OF STARK COUNTY

[Title omitted]

MOTION FOR NEW TRIAL—Filed April 4, 1946

Now comes the defendant, John Harvey Haley, by his attorneys, and moves the court to set aside the verdict of the jury returned in this cause on the 3rd day of April, 1946, and for a new trial, for the following reasons:

1. The verdict is not sustained by sufficient evidence, is against the weight of the evidence, and is contrary to law.

2. Newly discovered evidence material to the defendant, which the defendant could not with reasonable diligence have discovered and produced at the trial.

3. Misconduct of the prosecuting attorney.

4. Error in the admission of evidence offered by the State of Ohio.

5. Error in the exclusion of evidence offered by the defendant.

6. Error in the court's charge to the jury.

7. Error by the court in refusing to charge the jury as affirmatively requested by the defendant.

8. Irregularity in the proceedings of the court, jury and prosecuting attorney.

9. Other errors of law occurring at the trial by reason [fol. 32] of all of which the substantial rights of the defendant were materially affected and he was prevented from having a fair trial.

10. Error in overruling defendant's motion to direct a verdict.

Amerman, Mills, Mills, Jones & Mansfield, Attorneys
for Defendant.

Brief

Prior to the time of the hearing on this motion, counsel for the defendant will file a supplemental brief in which the issues will be discussed in detail, and affidavits will be furnished in support of the foregoing motion.

Defendant requests oral argument on said motion.

Amerman, Mills, Mills, Jones & Mansfield, Attorneys
for Defendant.

A copy of the foregoing Motion and Brief was mailed to D. D. McLaughlin, Prosecuting Attorney of Stark County, Ohio, this 4th day of April, 1946.

Amerman, Mills, Mills, Jones & Mansfield, Attorneys
for Defendant.

[fol. 33] IN COURT OF COMMON PLEAS OF STARK COUNTY

[Title omitted]

JOURNAL ENTRY—SENTENCE PRONOUNCED AFTER JURY
VERDICT OF GUILTY—Filed June 5, 1946

This day came the defendant, John Harvey Haley, into open court, in the custody of the Sheriff, accompanied by his counsel, E. L. Mills, Esq., and Edgar W. Jones, Esq., having heretofore been found Guilty by a jury of the crime of First Degree Murder as charged in the indictment; and motion for a new trial having been made, the same is overruled to the overruling of which the defendant excepts; and the Prosecuting Attorney moved that sentence be pronounced against the defendant.

Whereupon the Court was duly informed in the premises on the part of the State, by the Prosecuting Attorney, and on the part of the defendant, by the defendant himself, and the defendant being inquired of if he had anything to say why the sentence of the law should not be pronounced against him, and having nothing but what hath already

been said, and showing no good and sufficient reason why sentence should not be pronounced, it is adjudged that the defendant John Harvey Haley, be confined in the Ohio Penitentiary at Columbus, Ohio, during the term of his natural life, unless he shall be pardoned, paroled, or otherwise released according to law, and that he pay the costs of this prosecution for which execution is awarded.

Frank N. Sweitzer, Judge.

[fol. 34]

[File endorsement omitted]

IN THE COURT OF COMMON PLEAS OF STARK COUNTY

[Title omitted]

NOTICE OF APPEAL—Filed June 22, 1946

Now comes the defendant, John Harvey Haley, and gives Notice of Appeal to the Court of Appeals of the Fifth Appellate District of Ohio from a judgment entered in this cause by the Court of Common Pleas of Stark County, Ohio, on the 5th day of June, 1946, which said judgment of said Court of Common Pleas of Stark County, Ohio, overruled the motion of this defendant for a new trial, entered judgment upon the verdict of the jury rendered on the 3rd day of April, 1946, and sentenced the defendant to imprisonment in the Ohio State Penitentiary for life.

Said appeal is on questions of law.

Amerman, Mills, Mills, Jones & Mansfield, Attorneys
for Defendant.

[fols. 1-2] IN THE COURT OF COMMON PLEAS OF STARK COUNTY

No. 13,978

STATE OF OHIO, Plaintiff,

vs.

JOHN H. HALEY, Defendant

Bill of Exceptions—Filed June 22, 1946

Trial before the Hon. Frank N. Sweitzer, and a Jury empaneled to try said cause, murder in the first degree, beginning Monday, March 25th, 1946

APPEARANCES:

On behalf of the State of Ohio: John Rossetti, Bernard Rodgers, from the Office of the P. A.

On behalf of Defendant: E. L. Mills, Edgar Jones, of the firm of Amerman, Mills, Mills, Jones & Mansfield.

Official Shorthand Reporter: Lucy Bowman.

[fols. 3-a-14] Be It Remembered that this cause came on for trial at the January Term A. D. 1946, of the Court of Common Pleas of Stark County, Ohio, before the Hon. Frank N. Sweitzer, Judge, and a Jury impaneled by due examination and process, to try said cause including a thirteenth or alternate juror; counsel for the parties and the defendant having waived any and all irregularities and deviation from statute, in connection with and incident to, obtaining a list of talesmen and prospective jurors from which to complete the impaneling of the regular jury herein and an alternate juror, after the original special venire has been exhausted.

Thereupon on Monday, March 25, 1946, the State of Ohio, to maintain the issues on its behalf, called the following witnesses and offered the following testimony, to wit:

[fol. 15]

STATE'S CASE IN CHIEF

Thereupon the State, to maintain the issues on its behalf, called as a witness MILDRED GUILIOMA, who being duly sworn by the court, testified as follows:

Q. Your name is Mildred Guilioma?

A. Yes, sir.

[fol. 16] Ex. by Mr. Rogers:

Q. What is your address?

A. 1147 McKinley Avenue, SW, Canton, Ohio.

Q. Is it Miss or Mrs?

A. Miss.

Q. Did you know Mr. William Karam?

A. Yes, I did.

Q. In his lifetime? You knew him when he was alive?

A. Yes, I did.

Q. Do you remember the night,—without going into it,—remember when Mr. Karam was shot?

A. Yes, I do.

Q. Had you seen him that night?

A. Yes.

Q. Can you remember about what time you saw him?

A. About ten minutes of 12.

Q. Where did you see him?

A. In his store.

Q. And after you left the store, tell us what you did.

A. I turned down Navarre Road to go — him, and just then we passed 3 boys.

Q. Who was with you?

A. My mother.

Q. You were going west on Navarre Road?

A. Yes sir.

[fol. 17] Q. Go ahead.

A. So we turned the corner and I think it was about forty or fifty feet from the corner of the store there was three boys coming down there and they was talking,—I could not place who they were, but I knew they were three young fellows. The reason I noticed them was because we had to go around them. They didn't move to let us pass. We had to pass around them. They seemed to be in a hurry.

Q. Could you tell whether they were,—what nationality or rather what race they were,—what color?

A. Yes, I could tell that.

Q. How were they walking?

A. They were walking with their arms linked together, three abreast.

Q. Three in a line?

A. Yes, and they were in a hurry.

Q. And that was about 40 feet west of the Karam store, was it?

A. 40 or 50 feet.

Q. When you got to them, what happened?

A. They did not move over and we had to walk around them. My mother and I had to. She walked ahead of me.

[fol. 18] —. Did you walk around them on the south side of Navarre or how?

A. No, on the north side.

Q. Are you able to describe these boys?

A. Well, I would say—I did not see their faces, but I could tell—I saw they were dressed in dark clothes one in a jacket, and the third had on a long light coat. One wore a cap and the other had on a hat.

Q. The one with the cap, where was he?

A. He was on the side closest to me.

Q. What kind of a cap was it?

A. It was just an ordinary cap, I guess.

Q. Did you observe what was the—what the position of that cap, was on his head?

A. Well, the brim was pushed up.

Q. That is, the bill of the cap was pushed up?

A. Yes.

Q. Now, the boy with the hat, where was he?

A. He was in the middle.

Q. What kind of a hat did he have?

A. He had a pork pie hat, pushed back on the back of his head.

Q. Did you say anything to the boys?

A. No.

Q. Did they say anything to you?

A. No.

[fol. 19] Q. Now, who had on the long coat?

A. He was the boy on the south side of Navarre, the closest to the street.

Q. Did the boy in the middle have a coat on?

A. He had on a jacket, dark jacket. I couldn't say if he had any coat over, but a sport jacket he had on, I think.

Q. Can you tell this jury as a matter of opinion, about how tall these boys were?

A. They were about as tall as I am,—about five feet six,—maybe a little taller than me.

Q. After you passed them on the north side of that road, did you observe where they went after they passed you?

A. No, I did not. I didn't turn around to look.

Q. You and your mother kept on going west, did you, on Navarre?

A. Yes, we kept on going west on Navarre.

Q. After you had passed them, did anything happen that you know of now?

A. Nothing at all, no.

Q. And that was about 10 minutes of 12?

A. About 10 minutes of 12.

Q. Were these boys white or colored?

A. They were colored. I could distinguish that.

[fol. 20] Q. You did not know any of them?

A. No, I didn't.

Q. State what sort of a light was there over that store,— street light? Around there?

A. Well, yes, there is one at the alley. That's the first alley west of it. It wasn't very bright.

Q. Is there or is there not a house west of that store?

A. Yes, there is a big double house there.

Q. Where were you with reference to that house when you passed the boys?

A. It was just about to the driveway at the end of the Karam house, before we got to that house.

Q. And that driveway would be east of that house?

A. Yes, to the east of that big house, and west of the Karam house, before you get to the street light.

That's all.

Mr. Jones; No cross examination.

Thereupon the State, further to maintain the issues on its behalf, called as a witness one GEORGE SIMON, who being duly sworn by the court, testified as follows:

Direct examination.

By Mr. Rossetti:

Q. Will you state your name?

A. George Simon.

[fol. 21] Q. What is your address?

A. 1206 South Market, Canton, Ohio.

Q. Mr. Simon, did you know Mr. William Karam?

A. Yes sir.

Q. How long had you known him?

A. I can't just say but for at least 10 years.

Q. Do you remember the night he was shot?

A. Yes sir.

Q. Did you happen to see him that night?

A. Yes sir.

Q. What time of night did you see him?

A. It was around 11:30 in the evening when I was in there, when I got in the store.

Q. Did you see Mr. Karam in the store?

A. Yes.

Q. Was there anyone else in the store at the time?

A. Well, there was a few folks came in, bought some things and then went out again.

Q. Do you know approximately what time you left there?

A. About ten minutes to twelve.

Q. And where were you going after you left Karam's Confectionery?

A. I was on my way home.

Q. Which way did you go home?

A. South and east. Across the street and then south.

Q. Did you cross Market Avenue South?

[fol. 22] A. I crossed Market, yes.

Q. After you left Karam's Confectionery, did you see or hear anything?

A. No.

Q. Did you notice anyone?

A. No.

Q. After you left the confectionery?

A. After I left the confectionery I didn't see anybody. I did—there was no traffic on the street, nothing.

Q. After you crossed the street, did you see or hear anything?

A. Well, I heard a little noise.

Q. What kind of noise?

A. Something like a shot,—or if it was I didn't pay much attention to it.

Q. Where were you when you first heard that noise?

A. I was about 5 feet away from that stop sign. There is a bus stop sign there.

Q. On which corner was that sign?

A. That was on the left, my left side as I was going.

Q. Would that be the southeast corner?

A. The southeast corner of Navarre and Market.

Q. After you heard that noise that was like a shot, what happened next?

A. I walked,—I kept on walking, and while I was walking [fol. 23] one fellow passed me and bumped me on the arm, and just then Mr. Karam hollered "Joe" in a faint voice.

Q. Then what happened?

A. Then, a fellow passed me on my left side,—made me turn a little bit,—bumped me, and I saw Mr. Karam standing in his door, and I saw the three fellows going east, on east of the American Drop Forge.

Q. Which direction did these three men run?

A. Two of the fellows,—the first two ran south and then I turned and saw the third one run east. I turned quick again I know and hollered after one fellow "Hey you", because he had bumped me.

Q. What did you do next?

A. I turned around again and went to find out what Mr. Karam wanted with me, because he hollered, and I saw him laying on the sidewalk.

Q. Then what did you do?

A. I ran over by Mr. Karam.

Q. What did you find there?

A. I found he was laying there. I picked his head up and talked with him. I said "Will, tell me what happened here,—who did it".

Q. Did he say anything?

[fol. 24] A. No, he didn't say anything.

Q. Was there anyone else there at the time, Mr. Simon?

A. While I was talking, there was another fellow came up in a machine and parked there. I told him to call the police.

Q. Were you able to get a look at these three fellows that ran past you?

A. No.

Q. Were you able to tell whether they were of the white or black race?

A. They were of the colored race.

Q. Could you tell whether they were old or young?

A. They were young, young men.

Q. What else did you do, Mr. Simon, after you went over to where Mr. Karam was lying?

A. After the police came, I think I went up to the rooms where Mrs. Karam and Miss Karam slept and woke them up and told them what happened down stairs.

Q. Did you see Mr. Karam alive that evening?

A. Yes sir.

Q. Was he alive when he was taken away from the store?

A. He was—no, he was dead.

Q. Did I understand you to say, Mr. Simon, that you picked up a hat?

A. No.

[fol. 25] Q. Did you pick up Mr. Karam's hat?

A. I picked a hat up. It was on the sidewalk and I talked to that fellow.

Q. Mr. Simon, was there anybody in that store when you left excepting Mr. Karam?

A. No.

Q. Did you notice the way these three boys were dressed when they ran by you?

A. There were two with dark clothing that passed me.

Q. Did you notice the third one?

A. If I am not mistaken, he was dressed light.

Q. Did you notice what, if anything, they were wearing on their heads?

A. I can't recall. I can't remember that.

Cross-examination.

By Mr. Jones:

Q. When you got back to the sidewalk in front of the Karam store, was the door to the store open or closed?

A. The door was closed.

Q. The door was closed. Where did you see Mr. Karam with reference to the door?

A. When I left Mr. Karam was washing glasses.

Q. No, I mean when you got back there?

A. He was laying on the sidewalk in front of the door.

Q. And the door was closed?

A. The door was closed.

[fol. 26] Q. You say you left the store about ten minutes before twelve o'clock?

A. Around that time.

Q. How do you fix the time?

A. Because I said to him, "It is getting close to midnight. I think I would better go home."

Q. How did you know it was getting close to midnight?

A. I looked at the clock down there.

Q. You looked at a clock there?

A. Yes.

Q. What time was it when you looked at the clock?

A. I can say it was past 15 minutes of 12,—about 10 minutes of 12.

Q. About 10 minutes of 12 then?

A. Yes sir.

Q. Did you leave right away when you looked at the clock and said that?

A. Yes sir, I did.

Q. How long after that was it that you heard this noise?

A. About 2 minutes, I can say.

Q. During that time, then, you had walked across Market Street on the other corner?

A. Yes sir.

Q. Now, these people you saw pass you, did you know who they were?

[fol. 27] A. They were colored people.

Q. You don't know who they were?

A. No, I didn't know.

Q. Was there anyone else in the store except Mr. Karam when you left?

A. No.

Q. Had there been anyone else in there within the last few minutes before you left?

A. I think so, but I just don't know.

Q. You don't remember?

A. No.

Q. How long had you been in the store that evening?

A. About 20 minutes or something like that.

Q. Was there anybody in there when you got in the store excepting Mr. Karam?

A. I don't remember that. I can not say for sure. But there was always someone coming in and going out there. But I can't remember for sure.

That's all.

Thereupon the State, further to maintain the issues on its behalf, called as a witness one EARL C. BAER, who being duly sworn by the court, testified as follows:

[fol. 28] Direct examination.

By Mr. Rogers:

Q. Will you state your name?

A. Earl C. Baer.

Q. Where do you live?

A. 129 Smith Avenue, SW.

Q. How long have you lived there?

A. Two years.

Q. Do you know where the Karam confectionery store is on the northwest corner of Navarre Road and South Market?

A. Yes sir.

Q. Did you know Mr. Karam?

A. Personally, yes sir.

Q. Do you remember the night that he was shot?

A. Yes sir.

Q. Now, did you see him that night?

A. No sir,—yes after the shooting, I did.

Q. Then you saw Mr. Karam that night?

A. Yes.

Q. Were you down in the store?

A. Yes sir.

Q. Was Mr. Karam there?

A. No. I got there after the shooting.

Q. What time did you get there?

A. Approximately 10 minutes of 12.

Q. Was there anyone with you?

[fol. 29] A. Yes sir.

Q. Who?

A. My wife and sister and brother in law.

Q. Give me their names, please.

A. Mrs. Albert Hoffman, Mr. and Mrs. Hoffman, and my wife.

Q. Were you driving the automobile?

A. Yes sir.

Q. Who was driving, doing the driving?

A. I was.

Q. Did you drive to the Karam store?

A. Yes sir.

Q. Which way were you going?

A. I was going south on Market, coming to the store, on my right.

Q. Did you have an occasion to go into the store?

A. Yes sir. I was going there.

Q. Then you parked on the west side of Market, I take it, did you?

A. Yes sir.

Q. When you got there, it was about ten minutes of twelve, you say?

A. Approximately that.

Q. Did you go to the Karam store?

A. As I drove up, there were three youths running across Market Street.

[fol. 30] Q. Did you see the three youths running across Market?

A. Yes sir.

Q. Which direction were they running?

A. One boy was running east and the other two were running south on Market.

Q. One was running east on what?

A. East on Navarre Road. I believe that's the only one that crosses Market there.

Q. Is that where the switch goes back to the plants?

A. Yes sir.

Q. And you saw one boy running there?

A. Yes.

Q. And saw two boys running south on Market?

A. Yes, and almost hit Mr. Simon.

Q. Did you see Mr. Simon there?

A. Yes sir.

Q. Where was he when you saw him?

A. He was just a little bit down from the apartment house on Market. He was on the east side of Market on the other side of Navarre,—on the southeast corner of Market and Navarre.

Q. There is an apartment house there?

A. Yes, on the corner.

Q. And you saw him there, did you?

A. Yes, I did.

[fol. 31] Q. Did you observe these boys as to whether they were—strike that out. Can you tell us, did you get a good look at the boys?

A. No sir. My headlights just throwed on them, they were running, and I couldn't see so well.

Q. From the head lights that shone on them, could you tell whether they were colored or white?

A. I saw—got a glance of the side of the faces, and I could see they were colored.

Q. After you saw them running, there, what did you do then?

A. I looked across and Mr. Karam was just slipping down in the doorway, slumping down.

Q. Had you got out of the automobile?

A. As soon as I saw he was going, I jumped out.

Q. You saw Mr. Karam slump down?

A. Yes sir, he was approximately on the ground on the door step.

Q. Where was he lying—strike that. Did you determine which way he was lying,—where his head was and where his feet were?

A. Yes sir. His head was facing south, his feet were facing or were pointing north, with his knees in a doubled position.

Q. When you observed his body in that position, what did you do?

[fol. 32] A. I straightened his legs out and fixed him on the sidewalk in a comfortable position, and opened his shirt.

Q. After that, did you observe these boys again?

A. No sir, I was paying attention to Mr. Karam.

Q. What, if anything, did you observe as to his condition at that time?

A. He was gasping.

Q. You say you straightened his legs?

A. Yes.

Q. Then what, if anything, did you do?

A. I went in to call the ambulance and I didn't have no nickel and at that time Mr. Simon had one and I got a nickel from him and called the police.

Q. Did an ambulance arrive?

A. They came right away, that was the police ambulance.

Q. Were you there when they placed Mr. Karam in the ambulance?

A. Yes sir, I was. I helped pick him up.

Q. Do you know of your own knowledge whether or not Mr. Karam was living when he was placed in the ambulance?

A. Well, he was just like he was giving his last breath.

Q. But you don't know of your own knowledge whether he was living or not when he was placed in the ambulance?

A. No sir.

[fol. 33] Q. Did you have opportunity to observe the clothing of these three boys you saw?

A. I didn't pay much attention,—because I could see they were running.

Q. I take it you did not know whether they had their hats on or not?

A. No sir, but I saw a hat laying there on the sidewalk.

Q. Did you see a hat there on the sidewalk?

A. Yes sir.

Q. How close to the body of Mr. Karam was this hat?

A. Approximately 10 feet. It was by the sign post, perhaps 2 or 3 feet from the sign post.

Q. Would you be able to describe that hat to us?

A. All I paid attention to was the color it was. It was black, I believe, but I couldn't swear to that,—but dark. I didn't pay so much attention to that.

Q. Were you there when the hat was picked up?

A. Yes sir. I told the police to put it in the ambulance. I told them it was there. They picked it up, somebody did.

Q. Did you see a policeman put the hat in the ambulance?

A. Yes.

Q. Do you think you would know that hat again if you saw it?

A. I probably would.

Q. How long did you remain at the Karam store after the ambulance left?

[fol. 34] A. Until about 1:30 they left us there. I helped look for the gun and raised Mr. Karam's brother who lives up the street. Then we all went to police headquarters. They took our statements and then we were released about 3 o'clock.

Q. Did you or did you not observe any—withdraw that. Did you or did you not observe any evidence of a gun being there?

A. I was with the detective when we found the ejected shell laying by the door.

Q. Can you tell us the name of that detective?

A. I believe it was Mr. Wells, Officer Wells, but I am not sure. He had a brown suit on today.

Q. Can you tell us where that empty shell was with reference to the door?

A. Right off I don't remember that, not right off hand. But I remember seeing him picking it up.

Q. You just don't know where in the store it was picked up?

A. I know it was by the door, but I can't say the exact spot.

Q. After Mr. Karam's brother came, did you do anything further?

A. No sir, that was all.

[fol. 35] Q. Mr. Baer,—that's all, I believe.

Cross-examination.

By Mr. Mills:

Q. Mr. Baer, what time was it that you drove up to the Karam store that night?

A. It was approximately 10 minutes of 12.

Q. How do you fix the time? Did you look at your watch?

A. At the time I did, yes sir.

Q. At the time you drove up,—you mean (interrupted).

A. I was returning from Detroit and I wanted to see how long it had taken me to drive from Detroit, and so I looked.

Q. Where were you when you looked at your watch?

A. At the Pennsylvania Railroad and Cleveland Avenue. I came down Cleveland on Route 8 to the first street on the other side of the railroad.

Q. Who was with you?

A. My wife and my brother in law and my sister.

Q. When you drove up, did you come up right in front of the Karam store?

A. Yes sir.

Q. When you drove up there, there wasn't anybody there, was there?

A. In the street?

Q. Yes.

A. No sir, except Mr. Karam in the doorway.

Q. Was the door open or closed?

[fol. 36] A. It was open.

Q. And did you see a man lying there?

A. Yes sir.

Q. Where was he lying?

A. Right in the doorway.

Q. Right in the doorway?

A. Yes sir. He had one leg out on the door step on the sill, because the doorway is not very big.

Q. And the other foot was inside the store?

A. No sir. It was wedged in the doorway.

Q. That's a double door, isn't it?

A. Yes sir, only one door opens, though.

Q. And it opens on the inside?

A. Yes sir.

Q. Toward the inside?

A. Yes sir.

Q. Now, as you drove up there, you did not see anybody except this man, did you?

A. In the store, no, that was all I saw..

Q. Did you see a man across the street?

A. Yes sir.

Q. Where was he?

A. On the other side of the apartment house on Market.

Q. Where was it with reference to the bus stop?

A. Right in front of the bus stop.

Q. What was he doing when you saw him first?

[fol. 37] A. When I saw him first, the two boys were running past him.

Q. Was he moving or walking, or what?

A. Well, I don't remember just at the time whether he was moving. I only remember seeing him.

Q. How many people did you see pass him?

A. Two.

Q. Two?

A. Yes sir.

Q. Did you see anybody else except these two?

A. Well, another one ran up that railroad sideway.

Q. That's to the east?

A. Yes sir.

Q. Then, when you drove up there, what did you do, tell us just what you did then.

A. When I saw Mr. Karam I got out of the car, turned the lights off, left the motor running, got out and ran over to him, saw how he was gasping, and straightened his legs, because he was uncomfortable, and I had had first aid in the Army, and I fixed him so he would be comfortable.

Q. Yes.

A. I pulled him out on the sidewalk. His head was still on the door sill. I pulled his body on the sidewalk, where there was enough room to straighten his legs out.

Q. He didn't talk to you?

[fol. 38] A. No sir.

Q. And you did not talk to him?

A. I called to him, "Mr. Karam".

Q. But he did not answer?

A. That's right, he did not.

Q. Then the man across the street came over to you?

A. Yes sir.

Q. And about how long was it before he came over to you?

A. He came over immediately,—probably only 15-20 seconds.

Q. Did you know him?

A. No, I did not know him.

Q. Did you hear anybody call him?

A. No.

Q. Then I believe the next thing you did was to try to call an ambulance?

A. Yes sir. I didn't have no nickel, and it was a pay telephone, and I went back out to the doorway and to where Mr. Simon was with Mr. Karam and he had a nickel. So I went back in and called.

Q. You didn't know who these parties were that you saw running, did you?

A. No sir.

Q. Didn't know any of them?

A. No sir.

[fol. 39] Q. Did you have opportunity to observe them?

A. No sir, I didn't observe them, only they were running, I saw that.

Q. You saw them running?

A. Yes.

Q. You did not hear a shot fired?

A. No sir.

Q. Heard no noise of any kind?

A. No sir.

Q. And there was nobody near the store then except the man across the street?

A. That's right.

Q. And you think that was about 10 minutes of 12?

A. I believe it was.

Q. How long was it before the officers came there?

A. I didn't pay much attention to that. It didn't take them very long.

Q. It didn't take them very long?

A. No.

Q. Where did you find the shell in question?

A. I didn't find the shell. I saw the detective pick it up by the doorway, but just where I don't know. I didn't pay that much attention to it.

[fol. 40] Q. It wasn't in the store? It was right by the doorway?

A. Yes, it was in the store, but it was right by the doorway. It was inside the store.

Thereupon the State, further to maintain the issues on its behalf, called as a witness, one RAY A. CAMP, who being duly sworn by the court, testified as follows:

Direct examination.

By Mr. Rossetti:

Q. Will you state your name?

A. Ray A. Camp.

Q. Your address?

A. 1528 23rd Street, N. E.

Q. What is your occupation?

A. Policeman, City of Canton, Stark County, Ohio.

Q. How long have you been with the police department here?

A. Something over 8 years.

Q. Going directly to the night of October 14, 1945, the night Mr. William Karam was shot, do you remember that night?

A. I do.

Q. Did you have occasion to go to the Karam confectionery?

A. Yes sir.

Q. Were you there on that particular night around 11:50 P. M.?

A. Yes sir.

[fol. 41] Q. And what did you do that particular night, — strike that, please. What were your duties that night for the department?

A. We were working with the ambulance that night.

Q. Had you been told by your superior officer to go to the Karam confectionery?

A. Yes sir.

Q. Were you at headquarters when you were given that order?

A. Yes sir.

Q. Were you accompanied by anyone?

A. Officer Burnowsky.

Q. Do you remember what time you got to the confectionery? To William Karam's place that night?

A. Well, it was midnight or shortly before.

Q. Officer Camp, what did you see after you arrived at the confectionery?

A. We saw Mr. Karam lying on the sidewalk in front of his doorstep.

Q. What position was he in?

A. He was lying parallel to the door step and perhaps a foot ahead of the step toward the street.

Q. Was there anyone there at the time you and Officer Burnowsky arrived?

A. Yes, there were several people standing there.

[fol. 42] Q. What was the first thing you did?

A. The first thing was got the stretcher from the ambulance. Then a party standing on the sidewalk said—

Object.

Court: Don't give any talk.

Q. What did you do after you got the stretcher out of the ambulance?

A. I picked up the hat laying near the body and placed it in the ambulance. Then we picked up the body. We placed that on the stretcher and placed him in the ambulance then.

Q. Did you see or find a hat there at the Karam confectionery?

A. Yes sir.

Q. Where did you find this hat?

A. That was laying about 2 feet from the curb.

Q. That was outside of the store?

A. That's right.

Q. Was Mr. Karam alive when you got there with Officer Burnowsky?

A. Well, he was still breathing.

Q. After you placed Mr. Karam on the stretcher and put him in the ambulance, was he still alive?

A. Yes, I would say he was.

Q. Did you talk with anyone there at the Karam Confectionery then?

[fol. 43] A. Nothing more than what was mentioned about the hat.

Q. Was your attention called to the hat?

A. Yes, it was.

Q. By one of the people there at the time?

A. That's right.

Q. Were there any other patrolmen there at the same time you and Officer Burnowsky were?

A. Not to my knowledge.

Q. What did you do, Officer Camp, after you placed Mr. Karam on the stretcher and into the ambulance?

A. We rushed him to the hospital.

Q. Were you accompanied by anyone?

A. Officer Burnowsky and myself.

Q. Were there two of you inside the ambulance where Mr. Karam was?

A. That's right.

Q. Who drove?

A. Officer Burnowsky.

Q. And you were there alone with Mr. Karam in that part?

A. Yes.

Q. Was he alive at the time you reached the hospital?

A. Well, the nurses examined him immediately and said not.

Deft. moves to strike.

Court: The last part is stricken, what was said. Jury will disregard that.

[fol. 44] Q. Were you able to observe Mr. Karam on the way to the hospital?

A. Yes.

Q. Can you tell whether or not he died on the way to the hospital?

A. That would be my testimony, yes.

Q. Officer Camp, I am showing you what has been marked for identification in this case as State's Exhibit A. Will you look at that and examine it please?

(Officer looked at exhibit A.)

Q. Having examined this hat, marked Exhibit A by the State, I will ask you whether you have ever seen that before today?

A. Yes sir.

Q. And where have you seen that hat?

A. Right where we picked Mr. Karam up.

Q. Where was this hat in reference to where Mr. Karam was?

A. It was laying toward the curb on the sidewalk, about 2 feet from the curb.

Q. Is this the same hat you saw there that night?

A. Yes sir.

[fol. 45] Thereupon the State, further to maintain the issues on its behalf, called as a witness OFFICER HENRY BURNOWSKY, who being duly sworn by the court, testified as follows:

Direct examination,

By Mr. Rossetti:

Q. Will you state your name?

A. Henry Burnowsky.

Q. Your address?

A. 1012 Gibbs.

Q. I believe you are with the Canton Police Department?

A. Yes sir.

Q. How long have you been with the police department?

A. About 2½ years.

Q. Officer, were you on duty the night of October 14, 1945?

A. Yes sir, I was.

Q. Do you remember what happened that night?

[fol. 46] A. Yes sir, I do.

Q. What were your particular duties in the police department for that night?

A. I was driver of the wagon and the ambulance.

Q. Did you receive a call that night to go to the Karam confectionery?

A. Yes sir.

Q. Had you been told to go there by someone?

A. Yes sir, by my superior officer.

Q. Do you remember what time that was that you arrived at the Karam confectionery?

A. Well, it was a few minutes before 12 midnight.

Q. Who went with you?

A. Officer Camp.

Q. Will you describe what you saw after you got to the confectionery?

A. Well, I saw the man lying there on the sidewalk.

Q. Do you know the name of that man?

A. Mr. Karam.

Q. Mr. William Karam?

A. Yes sir.

Q. Where was he lying on the sidewalk?

A. Just about a yard in front of the steps into the entrance of his store.

Q. Did you see anyone else there at that time?

[fol. 47] A. I wasn't looking for anybody else. I was interested in getting that man to the hospital.

Q. What then did you do?

A. Officer Camp and I placed the man,—first picked him up and placed him in the ambulance and went to the hospital with him.

Q. Did you put Mr. Karam on a stretcher?

A. Absolutely.

Q. Did you drive the ambulance from Karam's confectionery to the hospital?

A. Yes sir.

Q. Did you see anything else at the confectionery?

A. Outside of the hat, no.

Q. Did you see a hat there?

A. Yes sir.

Q. Can you tell us who found the hat?

A. Officer Camp picked the hat up.

Q. Were you there when he picked the hat up?

A. Yes sir, I was.

Q. Did you see him pick it up?

A. No sir.

Q. Did you look at the hat then?

A. Yes sir.

Q. Showing you what has been marked for identification as State's Exhibit A, will you look at this, please?

[fol. 48] (Witness looked at hat.)

Q. And examine it?

(Witness did so.)

A. That's the hat that was found at the scene by Officer Camp.

Q. And you and Officer Camp took the hat with you in the ambulance?

A. Absolutely, yes sir.

Q. After you got to the hospital, what did you do?

A. That hat went right along into the hospital with us.

Q. What did you do as to Mr. Karam?

A. We placed him on the cot in the emergency room in Mercy Hospital.

Q. Was there anyone in the emergency room?

A. Yes, there was a nurse there.

Q. Was there an examination made of Mr. Karam while you were there?

A. The doctor was called. I don't remember whether he did while we were there or not. I don't remember.

Q. Were you present that night in the hospital when Mr. Karam was examined?

A. Not in the emergency room, no.

Q. What was done with the hat later, Officer?

A. The hat was—was brought up to detective headquarters and given to Captain Harrison.

Q. Captain William Harrison?

[fol. 49] A. That's right.

Q. Officer Burnowsky, on that night, October 14, 1945, did you see the body of William Karam in Stark County, City of Canton, Ohio?

A. Yes sir, I did.

That's all.

Mr. Jones: No cross examination.

Mr. Rossetti:

Q. One further question, Officer Burnowsky. Do you recall whether or not you looked at Mr. Karam after you brought him up to Mercy Hospital and put him in the emergency room?

A. Yes.

Q. At that time, could you tell whether he was living or dead?

A. He was dead.

Thereupon the State, further to maintain the issues on its behalf, called as a witness one DAVID A. BOBER, who being duly sworn by the court, testified as follows:

Direct examination.

By Mr. Rogers:

Q. You are Officer David A. Bober?

A. Yes sir.

Q. Where do you live?

A. 310 Schwalm Avenue, N. E., Canton.

[fol. 50] Q. You are a policeman in the City of Canton?

A. Yes sir.

Q. How long have you been such policeman?

A. Three years and 5 months to the day.

Q. Were you a policeman in Canton on the 14th day of October, 1945?

A. I was.

Q. Do you know where the William Karam Confectionery store is in the City of Canton?

A. I do.

Q. Where?

A. 1133 Market Avenue, South.

Q. And on that night of October 14, 1945, were you on duty in the police department?

A. I was.

Q. In what capacity?

A. Patrolman.

Q. Did you have occasion to go down to the Karam store that night?

A. I did.

Q. About what time did you get there?

A. About 11:57 P. M.

Q. When you got there, what did you see?

A. I saw the late Mr. Wm. Karam.

Q. Where?

A. In front of the doorway.

[fol. 51] Q. Inside or outside of the building?

A. Outside.

Q. Are you able to tell us in what position he was?

A. He was laying on the sidewalk in front of the door with his head pointing northward, and his feet southward.

Q. That is his feet were in the street and his head was in the doorway, is that it?

A. That's right.

Q. Did you see any other persons there at that time?

A. Yes, I did.

Q. Will you tell us whom you saw?

A. On arrival, I saw Officer Burnowsky, Officer Camp and George Simon and Mr. Baer.

Q. After you saw those persons you have named, did you enter the store?

A. Yes, I did.

Q. Did you make any examination of the store then?

A. I did.

Q. And what, if anything, did you find in the store?

A. A shell casing,—32 automatic calibre.

Q. I hand you herewith what has been marked for identification as State's Exhibit B, and ask you if you ever saw that before?

A. Yes, I have seen that before.

Q. I will ask you whether or not that is or is not the [fol. 52] shell you found in the store?

A. Yes sir, it is.

Q. What was done with that shell after you found it?

A. I turned it over to Detective Young.

Q. Where in the store did you find it with reference to the door?

A. In back of the door.

Q. You say you gave it to Detective Young?

A. Yes, I did.

Q. Then after you found the shell, did you do anything?

A. You mean right after I found it?

Q. Yes.

A. I marked the shell.

Q. You marked the shell?

A. Yes.

Q. Were you there when the ambulance arrived?

A. The ambulance was already there when we arrived.

Q. Were you there when the ambulance left?

A. I was.

Q. When the ambulance left, did you do anything further with reference to the case?

A. Nothing more than obtain the witnesses' names.

Q. Did you talk to Mr. Karam when you got there?

A. No, I did not.

Q. Did you observe whether or not he was living when he left there?

A. Yes, he was.

That's all.

[fol. 53] Cross-examination.

By Mr. Jones:

Q. Officer Bober, you say you found that shell which has been marked as State's Exhibit B behind the door to the store?

A. That is when the door is open wide.

Q. That is a double door?

A. Yes.

Q. And as you go into the store, which door opens, the right or the left-hand one?

A. The right door, the door that was open, that I had reference to, that was open.

Q. You found the shell behind the right hand door?

A. That's right.

Q. Did you open the door that night or was it open?

A. The door was open.

Q. And you looked around behind the door?

A. I did.

Q. And the shell was where?

A. Behind the door. And there were two or three pop cases back of the door. The shell case was between the pop cases and the window display platform.

Q. And that window display platform would be the one in the front window of the store?

A. It would.

Q. Was the shell lying on one of the cases or was it on the floor?

[fol. 54] A. It was on the floor.

That's all.

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9 A. M. Friday

Thereupon the State, further to maintain the issues on its behalf, called as a witness DR. GEORGE F. CAIN, who being duly sworn by the court, testified as follows:

Direct examination.

By Mr. Rossetti:

Q. You are Dr. George F. Cain?

A. Yes sir.

[fol. 55] Q. What is your address, Doctor?

A. 912 Cleveland Avenue, NW. Canton.

Q. I believe you are a physician?

A. I am.

Q. Doctor, are you licensed to practice in the State of Ohio?

A. I am not as yet.

Q. You gave your address as 912 Cleveland Avenue, NW. That is Mercy Hospital, is it.

A. No, that is my home address.

Q. That is near the hospital?

A. Yes sir, one block away.

Q. What work do you do there, Doctor, in the hospital?

A. The work I do is that of an interne having a license for certain hospital work only.

Q. And as such, do you examine people who are brought into the hospital?

A. Yes sir.

Q. Do you render treatment to them?

A. Yes sir.

Q. Do you diagnose cases?

A. We take a tentative diagnosis.

Q. Were you in the hospital on the evening of October 14, 1945, or early morning of November 15, 1945? I mean October, 1945?

A. Yes sir.

[fol. 56] Q. Were you present when a man named William Karam was brought in?

A. Yes sir.

Q. Did you have occasion to examine Mr. Karam?

A. I was there, but I don't remember the details of it. I pronounced him dead at the time. So far as examination, I don't remember whether I made one or not.

Q. Who was present when you pronounced him dead?

A. That I can not remember now.

Q. Any police officers present?

A. Yes sir.

Q. You do not know who they were?

A. No, I don't.

Q. But you did look at the body of Mr. Karam?

A. Yes sir, purely to ascertain whether or not he was dead.

Q. And he was dead?

A. Yes sir.

No cross-examination.

Thereupon the State, further to maintain the issues on its behalf, called as a witness Dr. JACK HENDERSHOT, who being duly sworn by the court, testified as follows:

Direct examination.

By Mr. Rossetti:

Q. What is your name?

A. Dr. Jack Hendershot.

[fol. 57] Q. Address?

A. 2820 14th St. NW.

Q. Is Canton your home?

A. Yes sir.

Q. You live here now in Canton, Doctor?

A. Yes sir.

Q. And where did you attend medical school?

A. Ohio State University, sir.

Q. What year did you graduate?

A. 1945.

Q. Did you have any internship?

A. Yes sir, Mercy.

Q. How many years?

A. Nine months at Mercy Hospital, Canton.

Q. Are you still at Mercy Hospital at the present time?

A. That's right, sir.

Q. Until you go into the army, is that right?

A. Yes, sir.

Q. Which is when?

A. Next Monday.

Q. Will you tell the jury what some of your duties are as intern at Mercy Hospital?

A. Well, there are so many of them.

Q. Do you examine people that are brought into the emergency room there?

A. Yes sir.

[fol. 58] Q. Does that include any and all kinds of cases that are brought in?

A. All kinds, yes sir.

Q. Is your work devoted mostly to the emergency room?

A. Well, we rotate that. We are in there all our internship.

Q. Do you render treatment?

A. Yes.

Q. And arrive at diagnoses in various cases?

A. Yes sir.

Q. Doctor, did you have occasion to look at or examine the body of William Karam on the night of October 14, 1945, or early morning of October 15, 1945?

A. Early in the morning, sir.

Q. Can you tell approximately what time that was?

A. Yes, about 8:30 I would say.

Q. Where was the body?

A. It was in the morgue, sir.

Q. What was the occasion of your examination at that time?

A. I examined him for a bullet wound that was said to have been incurred the night before.

Q. Did anyone assist anyone, or did someone assist you in this examination?

A. Yes sir.

Q. Who was that?

[fol. 59] A. Yes sir.

Q. Who was that?

A. Well, the coroner had examined him and asked me to find the bullet, which I did.

Q. Was there anyone present when you were attempting to find the bullet?

A. Yes.

Q. Who?

A. Dr. Popoff. During the course of the examination there were doctors in and out all the time.

Q. Do you remember whether or not a Detective Burnowsky was there?

A. Yes sir, he was there.

Q. Was he present all the time?

A. No sir.

Q. What did you do, Dr. Hendershot?

A. After taking an X-ray to find the location of the bullet, I extracted the bullet from Mr. Karam.

Q. Having made an examination of that body, can you show where the bullet entered the body?

A. Yes.

Q. Will you point out where the bullet entered the body?

A. The bullet entered the left chest, to the left of the apex.

Q. What is the apex?

A. That's the point of the heart.

Q. Where was the bullet taken out of the body?
[fol. 60] A. The bullet was taken out of the body just below the scapula in the right chest, the s-oulder blade.

Q. What is the scapula, Doctor?

A. That's the shoulder blade.

Q. Can you tell, Dr. Hendershot, what course the bullet took?

A. Yes, sir.

Q. Will you tell us, Doctor?

A. The gullet entered the left chest, to the left of the apex, and passed through the lower lobe of the left lung and the right lung, hitting the top margin of the ninth rib, going to the left. That was shown by the X-ray.

Q. Can you tell the jury what, if any, organ the bullet traveled through?

A. The bases of both lungs.

Q. Who removed the bullet?

A. I did.

Q. Could you identify the bullet if you saw it?

A. That's beyond my profession. I don't believe I could recognize it, from my record.

Q. Was there an officer present when you did remove the bullet?

A. Three of them, I think.

Q. To whom did you give the bullet?

A. Mr. Burnowsky.

[fol. 61] Q. That's Sgt. Frank Burnowsky?

A. I don't know the first name, it was Burnowsky. I can recognize him.

Q. Doctor, can you state what was the cause of death?

A. Yes, it was due to shock.

Q. What brought about the shock?

A. The penetration of the organs with the bullet.

Q. Did the bullet cause his death?

A. That's right, sir.

Q. Showing you what has been marked for identification as State's Exhibit C, will you examine this, please?

A. (Doctor looking at bullet). I remember the bullet was embedded over the heart and rib.

Q. Does that look like the bullet you removed?

A. Yes, it does.

Cross-examination.

By Mr. Jones:

Q. You made this examination at the request of the coroner.

A. Yes sir.

Q. Was the coroner there when you made the examination?

A. No sir.

Q. Did you communicate the result of your examination to the coroner?

A. Yes sir.

Q. When?

A. As soon as the detective took the bullet.

[fol. 62] Q. How did you do that, by telephone or in person?

A. I believe I had the nurse call him.

Q. You had the nurse call?

A. Just to tell him it had been located.

Q. So you did not talk to him yourself?

A. No sir.

Q. Who was the coroner at that time?

A. Dr. Herman Welland.

Q. This bullet that you removed from this man's body, had it struck any bone in its course?

A. Yes sir.

Q. What bone?

A. Top upper margin of the 9th rib, right side.

Q. On which side?

A. Right side.

That is all.

Thereupon, the State, further to maintain the issues on its behalf, called as a witness one ANDREW ROMAN, who being duly sworn by the court, testified as follows:

Direct examination.

By Mr. Rogers:

Q. Will you state your name?

A. Andrew Roman.

Q. Your address?

A. 1648—3rd Street, Canton, Ohio.

Q. You are a policeman in the Canton Police Department, patrolman?

[fol. 63] A. Yes sir.

Q. Were you a patrolman in the Canton Police Department on October 14 last year?

A. Yes sir.

Q. Going to that particular night, October 14, 1945, did you have occasion to go down to the Karam Confectionery store on South Market?

A. Yes sir, we had—

Q. You have answered the question. With whom did you go, Officer Roman?

A. With Officer Bober.

Q. When you got there, what did you see, if anything?

A. We have a police emergency ambulance and it was there, and there was a body of a man lying on the sidewalk in front of the confectionery store. We assisted the officers, Burnowsky and Camp in putting this body in the ambulance.

Q. After doing that, did you enter the store?

A. Yes sir.

Q. With whom?

A. With Officer Bober.

Q. Did you examine the premises there?

A. Yes sir.

Q. What, if anything, did you find?

A. I seen blood on the floor of the store right—I would say—about 5 feet inside of the door.

[fol. 64] Q. Did you find any physical articles there yourself?

A. No sir.

Q. Did you see anyone find such an article?

A. Officer Bober found a cartridge shell.

Q. Handing you what has been marked for identification as State's Exhibit B, will you look at that and tell us if you have seen that before?

A. Yes sir, Officer Bober found that about 5 feet to the north of the door inside of the premises.

Q. Do you know to whom Officer Bober gave this?

A. He showed it to me, and then handed it to Detective Young.

Q. After finding the cartridge, did you and Officer Bober remain at the scene?

A. Yes, we did. We stood by while Detective Young and Detective Wells talked to the man named Simon.

Q. After that, did you do anything further with reference to the scene of the crime?

A. No sir.

Q. I believe that's all.

Cross-examination.

By Mr. Mills:

Q. Officer Roman, when you got there, how many people were there?

A. There were several people there.

Q. Officers, or bystanders, or who?

[fol. 65] A. There were two officers, Camp and Burnowsky, and Mr. Simon, and there were several other people there, who had stopped to make purchases at the store. I don't know who they were.

Q. What time did you get there?

A. We received the call about 11:55 and got there about 11:57 or 11:58.

Q. Where were you when you got the call?

A. At 20th and Cleveland, that's at Market and Cleveland South, where they come together there.

Q. When you got there, what was the first thing you did?

A. Officers Burnowsky and Camp were putting this person on the cot and I helped them.

Q. Did you go inside the store, then?

A. Yes sir.

Q. You did not see them pick up the body, did you?

A. I said we helped them do that.

Q. Where was the body laying?

A. On the sidewalk.

Q. What part of the sidewalk with reference to the front door of the place of business?

A. I would say it was about a foot or two feet from the place of business.

Q. That was, out on the sidewalk?

A. Yes sir.

Q. Was the door open?

A. Yes sir.

[fol. 66] Q. It was still open?

A. Yes sir.

Q. Did you examine the door to find out whether it was a door that went shut of itself, or one that had to be pushed shut?

A. I did not examine it.

Q. You didn't examine it. But it was open, at any rate?

A. Yes sir.

Q. Now, was there any blood any place else except where you have told us there was?

A. There was blood on the outside of the door, and inside of the store.

Q. Inside?

A. Yes sir.

Q. Now, just where was it, inside?

A. About 5 feet straight in front of the door.

Q. Five feet?

A. Yes.

Q. From the door?

A. Yes.

Q. Which way from the door?

A. I would say inside of the door, to the northwest direction.

Q. Northwest?

A. Yes sir.

[fol. 67] Q. Where was the jacket of this shell?

A. Officer Bober showed me that.

Q. Did you see him pick it up?

A. No, he told me.

Q. Did you see him pick it up?

A. No sir.

Q. So you don't know where he got that, do you?

A. No sir.

Q. As a matter of fact, no. Now, are you sure that this spot of blood,—withdraw that. How much blood was there that you saw there?

A. I would say it was not too much. There were just spots of it.

Q. Just spots of it? Were they all together in one place or in different places?

A. I would say there were lines,—like he went out of the door, walked out, or fell out.

Q. Did you make any measurements to ascertain the exact location of them? Of those spots of blood.

A. How do you mean?

Q. Just what I say. Understand my question? Read it to him.

Stenographer thereupon read question above.

A. The blood spots were——

Q. Did you make measurements of them, I asked?

A. Yes sir, I did. They were about 5 feet inside the door.

[fol. 68] Q. What did you measure them with?

A. I stepped it off by foot.

Q. Who was there and saw you step it off?

A. Officer Bober.

Q. Anybody else?

A. And Detective Wells and Young,—but I don't know if they watched me or not. They were there.

Q. Was there anybody in there except those men?

A. Officer Young was questioning Mr. Simon.

Q. I am not asking that. Was there anybody else inside the building?

A. There was Officer Young and Wells and Bober and myself and Mr. Simon, inside then.

Q. All inside the store?

A. Yes sir.

Q. How long were you there?

A. 15-20 minutes.

Q. Did all these officers remain there, except the ones that took the ambulance and went with the body in the ambulance?

A. Yes sir.

Q. Were there any more officers came?

A. I believe Officers Rinehart and Criss, came.

Q. How long did you all remain there?

A. They stayed after we had left.

[fol. 69] Q. What time did you leave?

A. I would say about 15 or 20 minutes after we got there.

Q. You have detailed all that you saw there, at the scene of this, have you?

A. Yes sir.

Thereupon the State, further to maintain the issues on its behalf, called as a witness one Officer KENNETH E. WELLS, who being duly sworn by the court, testified as follows:

Direct examination.

By Mr. Rogers:

Q. Will you state your name?

A. Kenneth E. Wells.

Q. Where do you live?

A. 118 Park Avenue, SW, Canton, O.

Q. You are a detective in the Canton Police Department?

A. I am a patrolman now.

Q. How long have you been on the police department?

A. Approximately 9 years.

Q. Were you on duty the night of October 14, last year?

A. I was.

Q. Did you have occasion while on duty, to investigate the shooting of Mr. William Karam?

A. I did.

Q. Tell us whether you went,—just where you went and what you did that night?

[fol. 70] A. Detective Young and myself were at headquarters on that particular night, and at approximately 11:55 a call came in to the department that a man was shot at Navarre Road and Market Avenue, South. Detective Young and I went there, got there perhaps a short time after that; and when we got there, the police ambulance was leaving on the way to the hospital. When we got to the scene there and parked our car and went into the place, Detective Young started to interrogate the people in the place, and I went outside to keep spectators away and listen to the radio for any communications that we might get relative to the man's condition.

Q. After that night, did you continue your examination into this case?

A. I did.

Q. Who assisted you?

A. Detective Young.

Q. In the course of that investigation, did you have occasion to see the accused, John Harvey Haley?

A. I did.

Q. Where?

A. At police headquarters.

Q. Did you talk to him?

A. I did.

Q. When?

A. It was on the morning of October 20th.

[fol. 71] Q. In what part of headquarters did you talk to John H. Haley on that morning?

A. It was in our record room, or Bertillon Department.

Q. Who were present?

A. Detective Young and I.

Q. Anyone else?

A. I got a call at home from Detective Young to come down there, and when I got to headquarters, the defendant was being talked to by Sgt. Burnowsky.

Q. During the talk that you had with Mr. Haley, was just Mr. Young and you present, or who all were there?

A. Just Detective Young and myself.

Q. In what—strike that. On what subject did you talk to Haley?

A. Relative to his activities on the night of October 14.

Q. Tell us what Haley told you about his activities on the night of October 14th.

Deft. objects.

Court: What day or night was this?

A. It was Saturday morning.

Court: About what time?

A. Approximately 1 o'clock in the morning, in the night-time.

Thereupon Mr. Mills comes to bench and in the hearing of Mr. Rogers and Mr. Rossetti, talks to court off record and out of hearing of court reporter, and jurors, etc.

[fol. 72] Court (Dictating first statement into record): At this time counsel for defendant request a preliminary examination, in the absence of the jury, claiming that whatever was said by the defendant was not voluntary, was not voluntarily said and was not given of his own free will. So, ladies and gentlemen of the jury: A situation has arisen here which means the court should take some testimony in the absence of the jury to determine tentatively the admissibility of certain testimony, it being claimed that testimony is not competent. Therefore the court will do that now in order to determine whether to permit this testimony go be given to the jury. While you are out of the courtroom and this is

proceeding, keep in mind all the cautions and admonitions given you heretofore. The plan we used yesterday, as to what rooms you will occupy was satisfactory, and you may retire to those respective rooms.

Thereupon the jurors retired, men going to room back of court's office, and women going into jury room off the courtroom.

Court: The jury is now out of the courtroom, and the following testimony will be taken in the absence of the jury.

[fol. 73] (Jury out of courtroom.)

Mr. Rogers: What was the last question?

Miss Bowman: The last question was by the court and was answered as follows: Q. About what time? A. Approximately 1 o'clock in the morning, in the nighttime.

Q. Yes. Did Mr. Haley make some statements to you?

A. He did.

Q. Were those statements made voluntarily or not?

A. They were made voluntarily.

Q. Was there any threat, or coercion, or force used on this defendant Haley?

A. There was not.

Q. Any promises made to him?

A. There were not.

Q. Was he mistreated in any manner?

A. He was not.

Q. Was he his own free agent in making those statements to you?

A. He was.

Q. What were the statements he made to you?

A. The first story he told me was that he had left home—

Mr. Mills: Just a moment. The court should now determine whether or not this was voluntary.

Court: Overruled. Exception to defendant. You may cross examine on this.

[fol. 74] Cross-examination. (Jury still out of room.)

By Mr. Mills:

Q. Mr. Wells, tell us what time it was that you got down there?

A. About 1 A. M.—one in the morning.

Q. When you got there, who was there?

A. Sgt. Burnowsky.

Q. Anyone else?

A. Detective Young was there.

Q. Anybody else?

A. There were others around in the building, but I don't remember who they were.

Q. And this was in the Bertillon Department?

A. The record room.

Q. Had you taken any measurements or finger prints of this boy at that time?

A. No.

Q. You had not placed any charge against him?

A. I had not.

Q. Do you know how long he had been in custody?

A. I could not say.

Q. You did not arrest him yourself?

A. I did not.

Q. When you got there, you found that he was there?

A. That's right.

Q. You knew he was a young boy, didn't you?

A. A youth.

[fol. 75] Q. Yes. Did you ask his age?

A. Yes.

Q. What did you say to him, if anything, before you asked him any questions?

A. What his name was.

Q. Yes. Anything else?

A. We asked him his name, his address, and proceeded to talk to him:

A. You proceeded to ask him questions, didn't you?

A. Yes sir.

Q. Without any more than asking him who he was, where he lived, then you asked him questions, didn't you?

A. That's right.

Q. Who did the questioning?

A. Both Detective Young and I.

Q. Anybody else?

A. No.

Q. But before you got through with this inquisition there, who all asked him questions? Who participated in those questions?

A. Detective Young and I, and Sgt. Burnowsky.

Q. Anybody else?

A. That's all I know.

Q. Did you have anybody there writing anything down?

A. No.

[fol. 76] Q. Didn't have anyone writing down what was said.

A. Other than Sgt. Burnowsky took the statement.

Q. Took the statement after you asked questions. Is that what you mean?

A. Later on, yes. I just don't catch your meaning.

Q. I am trying to find out, what did you do—I am trying to find out just what you did there?

A. Talked to the defendant.

Q. You asked his name, where he lived, and then you asked him questions?

A. Yes sir.

Q. You asked him questions, did you?

A. Yes.

Q. Mr. Burnowsky ask him questions?

A. Yes.

Q. Did Young ask him questions?

A. Yes.

Q. Was there anyone writing that down?

A. No.

Q. Those questions and answers?

A. No.

Q. Was there anybody else there?

A. No.

Q. Wasn't Mr. Weaver there?

A. No, he wasn't there. You mean Mr. Wilbur Weaver?

Q. Yes.

[fol. 77] A. I did not see him. I don't remember seeing Mr. Weaver there.

Q. Was Quilligan there?

A. I seen Captain Quilligan when I came in that morning.

Q. So he was there, wasn't he?

A. He was at headquarters.

Q. Was he there while you were asking these questions?

A. No sir.

Q. Wasn't Mr. Weaver there?

A. Mr. Weaver was not there.

Q. You know who that is, don't you?

A. I believe I know who you mean.

Q. The Prosecutor over there, the attorney?

A. The former prosecutor?

Q. Yes.

A. He wasn't over there.

Q. Wasn't he there?

A. I don't remember seeing him there.

Q. Well, at any rate, you asked him questions, after you found out who this boy was.

A. Right.

Q. You did not tell him anything about his rights, did you?

A. No.

Q. Didn't tell him he was entitled to have an attorney?

A. No.

[fol. 78] Q. Didn't tell him anything he said would be used against him, did you?

A. No.

Q. You just started asking him questions, all three of you policemen were in close proximity to him, standing around him?

A. No, no.

Q. What was your position there?

A. He was sitting on a chair near one of the desks in the room. I was seated at the desk when we first started to talk.

Q. Right close to him?

A. I would say within a distance of a few feet.

Q. Close enough so that you could put your hand on him?

A. No.

Q. Was there anybody else, close enough to put their hands on him?

A. I would say not.

Q. How long did this thing last over there?

A. I talked to him off and on from about 1 o'clock in the morning, possibly different lengths of interviews; and so did Detective Young, for I would say three—four hours.

Q. Three—four yours?

A. That's right, off and on.

[fol. 79] Q. During all that time, he was constantly being asked questions by these men whom you have mentioned?

A. Not constantly.

Q. How long, then, would intervene between the different policemen or officers asking this boy questions?

A. Well, Detective Young and I would talk together for a while.

Q. How long?

A. I would say 15—20 minutes, maybe longer.

Q. Then what happened?

A. Then I would leave and Detective Young would talk to him.

Q. You would leave the room?

A. That's right.

Q. Then who came in and took your place.

A. Nobody.

Q. Then what?

A. Then I would return and talk to him by myself, for a short time.

Q. Was there anybody else in there?

A. No one else but Detective Young and myself.

Q. There was two of you there all the time, was there?

A. Not with him all the time.

Q. How many times did you go back to your questioning?

A. Oh, several times,—perhaps 3 or 4,—maybe.

Q. Three or four times. Did you all take your turns in examining this boy, directing a series of questions, each 15 or 20 minutes?

[fol. 80] A. We would ask him questions,—talk to him.

Q. And that consumed about four hours,—three or four hours, you say?

A. I would say approximately that.

Q. When was there anything written?

A. That was later on.

Q. When was it?

A. I would judge about 5 o'clock in the morning.

Q. Five o'clock in the morning?

A. Yes.

Q. Who did that?

A. Sgt. Burnowsky.

Q. Anybody else?

A. No one else.

Q. Did that writing consist of questions and answers?

A. It did.

Q. How long did that consume, how much time,—getting the questions and answers that you reduced to writing in this case?

State objects: This officer did not take them.

Court: This is cross examination. Overruled. Exceptions.

A. I am unable to say how long that took.

Q. But you were there all the time the questions and answers were being written?

A. I was there.

[fol. 81] Q. Were the answers of this boy written down just as he gave them, or did you just write a resume of what he said?

A. They were given as he answered them.

Q. Exactly in his language?

A. His answers were written down as he gave them.

Q. You say he did that voluntarily?

A. He did.

Q. Why did it take three or four hours to find out what he had done that evening? Can you explain that?

A. Yes, it was because of his switching stories, of the different stories that he told.

Q. Did you write them all down?

A. No.

Q. You did not write down all the things he said, then, did you?

A. We got the high lights.

Q. You got what you wanted to write, didn't you?

Object overruled.

Q. Isn't it a fact you just wrote what you wanted to write down?

A. I wrote down what *he* we thought we would need.

Q. Thought you would need, and x-ed out the part, the balance, didn't you? Please answer.

A. Yes, I did.

[fol. 82] Q. During the course of this inquisition, I will ask you if you did not strike this boy?

A. I did not.

Q. You did not? Sure?

A. I did not.

Q. If you would not ask him a question, and then if his answer to that question did not suit you, then you would strike him?

A. I did not.

Q. You tore his shirt?

A. I did not.

Q. You, or somebody else there?

A. No.

Q. You kicked him, didn't you?

A. I did not.

Q. And beat him until he answered what you wanted him to, and signed what you wanted him to sign. Isn't that true?

A. That is not true.

Q. Didn't some of the other officers strike this boy?

A. They did not.

Q. Kick him?

A. They did not.

Q. Tear his clothing?

A. They did not.

[fol. 83] Q. And compel him to sign?

A. They did not.

Q. Compelled him to sign what you asked him to sign?

A. They did not.

Q. What did you do with him after he signed?

A. After he signed the written statement, he was taken out and I think returned to his cell.

Q. Returned to his cell?

A. Yes, There was a picture taken of him and the other two boys.

Q. Now,—when was this?

A. On the morning of October 20th.

Q. What time had you taken him into custody?

A. I did not take him into custody.

Q. What time had he been taken into custody?

A. That I could not say, what time.

Q. Do you know how long he had been in jail?

A. I do not.

Q. Had any attorney come there to see him?

A. I don't know that.

Q. And been refused admission?

A. I don't know that.

Q. Don't you know anything about that?

A. I don't know anything about that.

Q. Do you know Mr. Contie? You do, don't you?

A. Yes sir.

[fol. 84] Q. Wasn't he over there?

A. I did not see him.

Q. To get admission to see this boy?

A. I didn't see Mr. Contie.

Q. After you returned him to the jail on the 20th as you say, how long was he there?

A. I don't know.

Q. Did anybody see him while he was in your custody?

A. No.

Q. Did you permit him to telephone to his mother or to anybody?

A. He didn't ask that.

Q. He didn't ask to?

A. No.

Q. At any rate, nobody saw this boy from the time you went there to question him for three or four hours, until he was removed to his cell. That's right, isn't it?

A. I don't know if anybody seen him or not.

Q. Well, they didn't see him while you were there, until he was questioned 3 or 4 hours, and returned to the jail? During that time?

A. During the time we talked to him, no one else was there to see him.

Q. He did not have the privilege of counsel, did he at that time?

[fol. 85] A. Not while we were talking to him.

Q. And he did not have at any time while he was in the custody of the police, did he?

A. I don't know that.

Q. When was he taken from his cell?

A. I don't know.

Q. When was he taken to jail? Do you know?

A. No.

Q. Well, so far as you know, no attorney or anybody had seen him or talked to him after he was in the custody of the police,—to your knowledge?

A. From the time,—to my knowledge, from the time I talked to him until we were completed, there was no one there to talk to him.

Q. Then you don't know how long he was in his cell until he was taken to jail, do you?

A. I don't know that either.

Q. After you quit talking to him, as you say, what did you do then?

A. After we finished, I called for Sgt. Burnowsky to come and take the statement. After the statement was taken, I left and went and got a bite to eat, and then went down to the southeast section of town, where a search was being made for the weapon.

Q. That's all you had to do with this matter, is it?

A. That's all I had to do.

[fol. 86] Q. Did you question anybody else?

A. That particular day?

Q. Yes.

A. No.

Q. Or later?

A. No.

Q. You did not participate in any further inquiry of anybody else?

A. No. I did not.

Q. Do you know when he was arrested and taken into the custody of the police?

A. That I don't know, not the exact time.

Q. Would your record show that?

A. I would say the records should.

Q. But you did not look at it?

A. No.

Q. And you would not have personal knowledge of that?

A. I have no personal knowledge.

Q. You don't know who made the arrest, do you?

A. I believe it was made by Sgt. Burnowsky and Detective Young.

Q. And they were the ones that participated in this inquisition and these questions?

A. Yes.

I Think That's All.

[fol. 87] Redirect examination.

By Mr. Rogers:

Q. Officer Wells, it has been insinuated that this boy was mistreated before he confessed. When did Parks—Did Parks and Lowder confess before or after Haley did?

Object.

Q. Did Haley confess after he read Parks' and Lowder's confession?

Object.

Q. I withdraw that. Did he sign the written confession in your presence after he was shown the confession of Parks and Lowder?

Deft. objects.

Court: Take one thing at a time. What was that?

Reporter then read question.

Q. First, you took an oath from him, did you?

A. Right.

Q. And after that you called Mr. Burnowsky and he wrote the questions and answers on the typewriter?

A. Right.

Q. And Haley signed them in your presence?

A. He did.

Q. When that was done, had Haley in your presence been shown the confessions of Lowder and Parks?

A. He had been.

Q. Then what did he do after he read those confessions, those statements of Lowder and Parks?

[fol. 88] A. That's when he told us his complete story.

That's all with this witness.

Mr. Mills: That's all.

Court: Very well, you are excused for the present.

Thereupon the State, still in the absence of the jury, further to maintain the issues on its behalf, called as a witness OFFICER GEORGE W. YOUNG, who being duly sworn by the court, testified as follows:

Direct examination.

By Mr. Rossetti:

Q. Will you state your name?

A. George W. Young.

Q. Address?

A. 1122 Wertz, S. W.

Q. We will go directly to the question involved. Officer Young, did you question the defendant Haley on the morning of October 20, 1945?

A. Yes.

Q. Who was present at that time when you questioned him?

A. Well, Officer Wells and Frank Burnowsky took the statement.

Q. I mean before the statement was taken, Officer Young?

A. Well, there were five officers questioned him, and when he confessed to the crime, there was Officer Wells and myself.

[fol. 89]. Q. Before we get to this point, how many of you questioned Mr. Haley?

A. Sgt. Burnowsky and Officer Rinehart, Officer Kriss.

Q. Did you continually question this defendant, or was it off and on?

A. Well, it was periodically.

Q. In what room did you question this defendant?

A. In the Bertillon room.

Q. Is that known as the record room?

A. That's right.

Q. Do you know approximately what time you started to question this defendant?

A. I think it was right around 12:30 or 1 o'clock.

Q. When you first started questioning this defendant, did he give you an account of his activities for the evening of October 14, 1945?

A. He gave us an account of his activities. He gave us two different stories to begin with.

Q. Then did you continue to question Haley?

A. Yes sir.

Q. What time was it that Haley actually told you or Officer Wells of his participation in the hold-up and killing of October 14, 1945?

Object.

Question read by stenographer on request of the Court.

Court: In the absence of jury you may answer. Overruled defendant excepts.

[fol. 90] A. If my memory serves me correctly, I think it was approximately 4 in the morning or 4:15.

Q. At the time you were questioning Haley with the other officers, did you have a stenographer there in the room?

A. No.

Q. That is, before the written statement was taken?

A. No.

Q. You did not?

A. We did not.

Q. Now, did Haley tell you what he did that night at all?

A. Yes, he did.

Q. Before Haley told you what he did that night of October 14, 1945, did you show him any statements to read?

A. Not right away, but we did show him statements.

Q. Whose statements were they?

A. I showed him Parks' statement.

Q. In which Parks confessed?

A. Yes sir.

Q. Did you show him any other statements?

A. Yes.

Q. Whose?

A. Lowder's statement.

Q. Did he confess?

A. Yes.

Q. And did Haley read both of those confessions, those statements?

A. He did.

[fol. 91] Q. And after he read those two statements, what did he tell you,—Haley?

A. He completed his confession to us,—his part of it, with these two boys.

Q. Then he confessed to you and Officer Wells orally?

A. That's right.

Q. What happened then?

A. Then he also went over it orally in the presence of Sgt. Burnosky before the statement was taken, in the presence of Wells and I.

Q. Did you strike Haley at that time, at any time?

A. No.

Q. Did you attack him?

A. No.

Q. Did you threaten him?

A. No.

Q. Did you promise him anything?

A. No.

Q. Did anyone strike him?

A. Not to my knowledge.

Q. Did anyone kick him? You or anyone?

A. No. Not to my knowledge. I did not.

Q. Did anyone grab him by the shirt?

A. Not that I know of, no.

Q. Now, who asked Haley about making the written statement?

A. Burnowsky, Sgt. Burnowsky.

Q. Was Haley advised of his constitutional rights as to whether or not he wished to make a written statement?
[fol. 92] A. Yes, and it was read to him.

Q. What did he say?

A. He was willing to make the statement.

Q. What did Haley say to you after he read the statements of Parks and Lowder about his participation in this crime?

A. Well, he did not say anything for a few minutes. He—I asked him to re-read the statements, and then he stated that—he said “I was there.” I said “Explain it.”

Q. Did he explain it?

A. Then he told us the story, where he was.

Q. Were you present when the written statement was taken?

A. I was.

Q. And at that time, did you get a stenographer?

A. No, there was no stenographer there. Sgt. Burnowsky took the statement himself. He wrote it himself.

Q. Who asked the questions?

A. Between Officer Wells, myself and Sgt. Burnowsky.

Q. And Sgt. Burnowsky wrote the answers?

A. Yes sir.

Q. After the statement was written up, did Haley refuse to sign it?

A. No.

Q. Did he sign it voluntarily?

[fol. 93] A. He did.

Q. Did he make a voluntary statement to you before he made this written statement?

A. What do you mean?

Q. When he orally confessed to you and Officer Young. Was that voluntary?

A. Yes, oh yes.

That's all.

Cross-examination (jury absent).

By Mr. Mills:

Q. Did you arrest Haley?

A. Yes, I was one of the officers who arrested him.

Q. Where?

A. In his home.

Q. What time of day?

A. If I remember correctly, I think it was approximately 12 o'clock at night, or perhaps 12:15.

Q. What date?

A. Let's see. I believe that was on the 19th or 20th. I would have to look at the date to make sure.

Q. Where did you take him when you arrested him?

A. Right to headquarters.

Q. Put him in a cell?

A. No sir.

Q. Where did you take him?

A. To the Detective Bureau.

[fol. 94] Q. How long did you keep him in the detective bureau?

A. I think it was about five or five and a half hours.

Q. Then where did you take him?

A. I did not take him.

Q. Where was he sent?

A. So far as I know, he was confined.

Q. You know what happened to him. Where was he taken?

A. I wouldn't know.

Q. You don't know anything about that?

A. That was for the superior officers to do.

Q. Who was that?

A. The Sergeant and the Captain.

Q. Who were they?

A. Captain Quilligan and Sgt. Burnowsky.

Q. And Quilligan and Burnowsky had been there all the time during those five hours, hadn't they?

A. Yes sir.

Q. And Assistant City Solicitor Weaver was there, too, wasn't he?

A. Part of the time, I believe.

Q. How many times did you hit Haley during that night?

A. What's that?

Q. How many times did you hit Haley that night?

A. I did not hit him.

Q. No. You never touched him, did you?

A. No.

[fol. 95] Q. Who tore his shirt?

A. I don't know.

Q. You tell us that you did not see his shirt torn?

A. No, I did not.

Q. What time was it when you knocked him down?

A. I did not knock him down.

Q. You didn't knock him down? Did anybody knock him down?

A. Not to my knowledge.

Q. Well, you were there all the time, weren't you?

A. Yes.

Q. Along with maybe 5 others?

A. Yes.

Q. And nobody touched him?

A. Not to my knowledge.

Q. Who was there when this inquisition started?

A. Well, Burnowsky, Sgt. Kriss, Rinehart, Officer Wells and myself, the Captain.

Q. What captain do you mean, Quilligan?

A. Yes sir.

Q. When did Weaver come in?

A. I don't know exactly, what time, but I know he was there part of the time.

Q. Was he there when this statement was signed?

A. No, I don't believe he was.

Q. Was he there when this oral statement was made to you?

[fol. 96] A. No, he wasn't.

Q. How many times did Weaver hit this man?

A. None to my knowledge.

Q. Were you in the room constantly during that period of questioning?

A. Not constantly.

Q. How many times did you go out?

A. Maybe a half a dozen times.

Q. How long did you stay out at a time?

A. About 15 or 20 minutes at a time.

Q. When you met Haley at headquarters, did you tell him he had a right to counsel?

A. I don't believe I did.

Q. You did not hear anybody else tell him either, did you?

A. No.

Q. Did you tell him that anything he might say could be used against him?

A. No.

Q. Did you hear anybody else tell him that?

A. No.

Q. You knew how old he was, didn't you?

A. No, not then.

Q. Didn't you ask him?

A. I did afterwards.

Q. He told you, didn't he?

[fol. 97] A. Yes.

Q. Now, how close were you to Haley while you were questioning him?

A. About as close as I am to you.

Q. The distance I am now standing from you?

A. Yes.

Q. Did you get within range of him at all,—within reach of him?

A. I could not have reached him if I had wanted to.

Q. He was sitting down, was he?

A. Yes.

Q. And you were standing up?

A. I was sitting down.

Q. Was everybody else sitting down, too.

A. While I was there, they were sitting down.

Q. How were the chairs arranged?

A. He was in front of me.

Q. Was there a desk?

A. Yes.

Q. How were you sitting with reference to the desk?

A. He was sitting in one chair, and I sat here (showing) and Wells sat to my right, and Haley here.

Q. You were facing Haley?

A. Like I am you.

Q. And Wells was to your right?

A. Yes.

[fol. 98] Q. Where were the rest of these people?

A. At the time when we started talking to him, that was the position. I wasn't in there when any others talked to him.

Q. When was he taken into Municipal Court?

A. I can't just answer that, unless it was the next morning. I am not sure whether it was the next morning or the morning after.

Q. At the time this question was going on, he had not been taken into Municipal Court then?

A. When he was questioned? No.

Q. When was he taken to the county jail, then?

A. That I don't know.

Q. Do you know whether it was the next day or not?

A. I could not say, because after that night, it was in the hands of our superior.

Q. Did you see anyone during that night when you were questioning him except the police officers? Or did Haley see anyone else?

A. I don't believe, not to my knowledge.

Q. He was denied the privilege of having counsel, wasn't he?

A. Not through me. That I don't know. I can't answer that, except for myself. I don't know anything about that.

Q. Do you know attorney Contie?

[fol. 99] A. Yes, I do.

Q. Didn't he come over there and try to get in to see Haley and was refused admission?

Mr. Rogers: When? That night or after the confession?

Court: You may answer.

A. I never saw Leroy Contie. I don't—(interrupted)

Q. You don't know anything about him being over there?

A. I never saw him. I wouldn't have any knowledge of that.

Q. During that night when you questioned him, didn't Haley ask permission to telephone his mother?

A. Not to me. He did not ask me.

Q. He did not ask you?

A. He did not.

Q. Did you hear him ask anybody else?

A. Not in my presence.

Q. Do you know whether he asked anybody else?

A. No, I do not.

Q. Isn't it a fact that right in your presence Haley asked permission to telephone his mother and it was refused?

A. No sir.

I think that's all.

[fol. 100] Thereupon the State, still in the absence of the jury, further to maintain the issues on its behalf, called as a witness FRANK J. BURNOWSKY, who being duly sworn by the court, testified as follows:

Direct examination.

By Mr. Rogers?

Q. You are Frank J. Burnowsky?

A. Yes sir.

Q. What is your address?

A. 1207 Colonial Boulevard, Canton, Ohio.

Q. You are a sergeant of police?

A. Sergeant of Detectives.

Q. And on the morning of the 20th of October, last, did you take a statement from John H. Haley with reference to the Karam murder?

A. I did.

Q. Who was present when you took that statement?

A. Detective Wells and Detective Young.

Q. Was the statement reduced to writing?

A. It was.

Q. In what form?

A. Question and answer form.

Q. Did you ask the questions?

A. I did.

Q. Did Haley answer them?

A. He did.

Q. Who typed them?

A. I did.

[fol. 101] Q. Did Haley sign the statement?

A. He did.

Q. I will ask you whether or not that statement was taken voluntarily or involuntarily?

A. Voluntarily.

Q. Was there any coercion or threats used on Haley?

A. Positively not.

Q. Anybody promise him anything?

A. No sir.

Q. With reference to the time the statement was made by Lowder and Parks, when did Haley sign his statement? Before or after?

A. I know it was after Parks' statement.

Q. Did you show Haley Parks's statement before he signed his own?

A. That I don't remember, whether it was shown to him or not.

Q. Before Haley signed his statement, was he told of his constitutional rights?

A. He was.

Q. And did Haley read the statement before he signed it?

A. We read it to him. I did.

Q. And then he read it?

A. He read it after the statement was finished, before he signed it.

Q. Before you started to type it, had you been talking to Haley?

A. Yes.

[fol. 102] Q. Did he tell you of his activities that night?

A. Yes.

Q. Is that the same story that was later reduced to question and answer form?

A. It was.

Q. Do you have that statement with you?

A. I have, the original, yes.

Q. Do you know who those witnesses' names are on there?

A. They were a couple of ice men. Detective Wells went down on the street and got them and brought them up.

Q. Were they present then?

A. At the signing of the paper, they were.

Cross-examination.

By Mr. Mills:

Q. Officer Burnowsky, were you one of the officers that arrested this boy?

A. I was one of them who went down and picked him up.

Q. Well, that's when he was arrested, wasn't it?

A. That's right.

Q. Who went with you?

A. Detective Young, Kriss and Carl Rinehart.

Q. Three of you?

A. Four, three in addition to myself.

Q. You went down in one car?

A. Two cars.

Q. In two cars?

A. Yes.

[fol. 103] Q. What time was it?

A. Oh, it was between 11:30 and 1 o'clock. I know his mother answered the door. He was not in that room, he was in the bathroom.

Q. Why did you go there that late?

A. That's when we broke the case.

Q. Is that the first time you had any information about him?

A. That's right.

Q. When did you get that information?

A. Shortly before we went down.

Q. How long before?

A. Very shortly. We picked up Lowder and brought him in. And then went back and got Haley.

Q. What time did you run in Lowder?

A. Well, I don't think it was any later than 11 o'clock when Lowder was brought in.

Q. Did you have a statement from Lowder?

A. There was a statement taken from him. But I did not take it.

Q. You had nothing to do with that?

A. No.

Q. Was it taken that same evening?

A. I believe it was.

Q. Did you see it?

A. Well, I have seen it. I did not see them take it.

[fol. 104] Q. Did you see it before you went down to get Haley, this boy here?

A. No, I saw it when I brought him up.

Q. Where did you take him?

A. We took him back into the identification room.

Q. What did you do there?

A. I talked to him a short time; Criss and Rinehart, I think talked to him a short time. We left and turned him over to Detectives Wells and Young.

Q. Were Wells and Young there when you were talking to him?

A. They were in and out of the room, I think. They may have been called in. I don't just remember.

Q. When you got him up to the headquarters, what is the first thing you said to him?

A. Oh, I don't know what we did say first. We started in to ask what he did on the 14th of October and he didn't have much to say. He kept his head down, so quiet.

Q. Then what did you do?

A. We kept talking to him and then we left.

Q. How long did you talk to him?

A. I don't think I talked to him over a half hour.

Q. Half an hour?

A. That's right.

Q. And during that time he did not tell you anything?

[fol. 105] Q. Was Young there all this time?

A. They walked in and out. I walked back in while they were talking to him alone, several times before I went away. I went out to the Lake about a boat.

Q. When did you get back?

A. They called me back over the air perhaps around 2:30 or 3:00 o'clock.

Q. When did you use the typewriter?

A. They called me back in the Detective Bureau and he gave me the statement and I reduced it to writing on the typewriter.

Q. What time of morning was this?

A. I imagine it was 3 o'clock in the morning,—or 3:30 maybe.

Q. When you took this statement?

A. When I started, yes.

Q. What time was it when you concluded it?

A. Well, I imagine it was close to 5 o'clock.

Q. It was about 6 or 6:30, wasn't it?

A. Well, we got the icemen on the street. They were delivering ice to Bender's. That's when we got them for witnesses. They went down for witnesses.

Q. Is that a copy of what you took?

A. Right.

Q. Let me see it. That the original?

A. That's the original.

[fol. 106] Q. When did you type the first paragraph of this?

A. Right when I started the statement. We typed it down to here. (showing).

Q. Here?

A. Yes. Right down to the answers. Then I read it to him. Then I asked questions and he answered them.

Q. Was Officer Young there when you read that to him?

A. He was.

Q. Anybody else?

A. Detective Wells.

Q. Did you type this, or did you tell him to?

A. I typed it. Then read it.

Q. When did you read it?

A. This top part?

Q. Yes.

A. Before I started the rest of it.

Q. And they were there, the officers?

A. Yes sir.

Q. After you had advised him of his constitutional rights, strike that. If you had advised him of his constitutional rights, they would have known it?

A. Yes sir.

Q. They were right there?

A. I think they were.

Q. They heard everything you said to him about his rights, as to whether or not he should answer any questions [fol. 107] or make any statement to you?

A. I read that close to him very clearly and distinctly.

Q. Please answer my question. They were there when you advised him of any rights he had, and whether the statement could be used against him?

A. Yes sir.

Q. They were right there and heard it?

A. That's right.

Q. And you started at that about 3 o'clock?

A. I think around that time.

Q. You did not finish it until about 5 or 6, did you?

A. Somewhere around there.

Q. In other words, it took you from the time you got there to prepare that document, about three hours, didn't it?

A. Oh, two hours, I would say,—a little over two hours, perhaps.

Q. Now then, during that time, did anybody strike this boy?

A. Absolutely not.

Q. You don't do that over there, do you?

Object.

A. No, we don't.

Q. Did you see anybody else, anybody, grab him by the shirt collar and tear his shirt?

[fol. 108] A. Positively no. There was no violence used on him whatever, and if he tells the truth, he will tell you that.

Q. Did you see him thrown down on the floor?

A. That is a falsehood.

Q. Did you see anybody kick him?

A. Absolutely not.

Q. Did anybody come over to see him while you were around?

A. I don't remember. There was quite a bit of activity around there. There were 15 or 20 there, and people in and out. But not in there while we were taking the statement.

Q. Did he ask you or anybody to telephone to his mother?

A. His mother knew where he was.

Q. Please answer the question.

A. No, he did not.

Q. Didn't he ask that, and didn't you refuse it?

A. Absolutely not.

Q. How long was he in jail over there?

A. I don't know that. I don't know when he was transferred out to the county jail.

Q. After you got through with your inquisition and got him to sign that paper, what was done with him then?

A. Well, I think Detectives Young and Wells took him over. I don't know whether they took him down to our jail or out to the county jail. I don't remember that. I went out after that.

[fol. 109] Q. When did they take him into court? Do you know that?

A. No. I don't remember that.

Q. When was the charge filed against him, do you know?

A. I don't remember that.

Q. Do you know whether there was one filed against him?

A. I presume there was, or he would not be here.

Q. When you arrested him at his home, you shoved him in the car, didn't you?

A. He went along peacefully. We did not have any reason to shove him in the car.

Q. And bruised his knee, didn't you?

A. No.

Q. Did you have hold of him, or who did?

A. I don't remember who did. I think maybe I had a hold of him. I was in the house with Detective Young.

Q. Why did you have to take hold of him?

A. We knew he was implicated in the Karam murder.

Q. He did not resist you; did he?

A. No. But we don't take chances in our business.

Q. Did you handcuff him?

A. I don't remember whether we handcuffed him at that time. We did later when we took him back.

Q. Took him back where?

A. To the house.

Q. Do you know whether you handcuffed him up for this inquisition?

[fol. 110] A. You mean when we first picked him up?

Q. Yes.

A. I don't know.

Q. Did anybody?

A. I don't remember whether anybody did or not.

Q. You say you did not take any chances?

A. That's right. While I had charge of him.

Q. How many detectives and officers were there around there, when he was brought up there?

A. Well, the biggest part of the force was working, but on different phases of the investigation. There was nobody talked to him outside of the ones I have mentioned.

Q. But how many officers and detectives were there around there in the room and in the immediate vicinity where he was when you brought him there and started questioning him?

A. I can't say that.

Q. About how many,—half of the men?

A. There were about twenty men working on the case.

Q. Inside the room?

A. Inside part of the time.

Q. What room did you take him into?

A. The identification room.

Q. And locked the door, didn't you?

A. That's right.

[fol. 111] Q. Stuck the key in your pocket?

A. We have no keys.

Q. Didn't you have a key?

A. No.

Q. Locked the door and put the key in your pocket?

A. No sir.

Q. And he was in there with how many officers?

A. Not over two at any one time. Parts of the time I walked in to listen to what was going on, several times. But

there were not over two officers with him questioning him at any one time.

Q. Not over two at any time?

A. No.

Q. Was there any attorney there?

A. No.

Q. Nobody at all?

A. Nobody.

Q. Was the city solicitor over there, that prosecutes cases?

A. No.

Q. He was not there?

A. No.

Q. Wasn't in the room at that time? At no time?

A. Not to my knowledge.

Q. If he had been there, you would have seen him?

[fol. 112] A. Well, we have quite a few rooms up there. This room we had him in was at the outer end.

Q. At any rate, from the time you arrested him up to the time he signed that paper, there wasn't anybody there to represent him, was there?

A. That's right. He represented himself.

Q. Isn't it a fact that the next day Mr. Contie came over there to see him?

A. If he was over there, I didn't see him.

Q. And he was refused admission?

A. That I don't know.

Q. Wasn't his mother refused admission to see him?

A. I never refused her admission.

Q. Do you know anybody that did?

A. I do not.

Q. Do you know of your own knowledge whether anybody ever got to see that boy from the time you arrested him until he was taken into the county jail, down there?

A. That I can not say, I don't know.

Q. So far as your knowledge goes, there wasn't anybody saw him, was there?

A. As far as my knowledge is concerned, I don't know of anybody that was even in to see him.

[fol. 113] Q. Did you give any instructions or orders to not let anybody see him?

A. I did not.

Q. Who has authority to do that? And who exercised that authority?

A. I don't know whether that was exercised or not. I have the authority, I give the authority whether a stopper should be placed on him.

Q. What do you mean by a stopper?

A. Incommunicado—that nobody talks to him.

Q. And that was the position of this boy?

A. No, I didn't say it was.

Q. You can't say it was not? can you?

A. No, that's right.

Q. What part did Quilligan have in this matter?

A. He notarized it.

Q. Why did you have it notarized?

A. To make it legal.

Q. To make it legal. In your judgment, it would not be legal unless it was notarized? Is that your idea?

A. Well, we have them all notarized. That's our procedure.

Q. And you always have this heading on all of them, don't you?

A. That's right.

[fol. 114] Q. That is all on there, on all of them, just the same?

A. They vary.

Q. In what respect do they vary?

A. In the charge and in the arrangement.

Q. But this constitutional right provision is in all of them?

A. It is, that's right. We inform them of that very distinctly and completely before we take the statement.

Q. And there is no question but what everybody over there knew that you had so advised him, is there?

A. He was advised when I took the statement.

Q. And Officer Young was there, wasn't he?

A. They were both there.

Q. Both there?

A. Yes.

I think that's all.

Mr. Rossetti: That's all the State has.

Witness: I would like to have my statement.

Thereupon Mr. Rossetti put paper in his lefthand coat pocket.

Mr. Mills: I would like to call a witness on this same phase, the defendant's mother.

Thereupon the jury was brought back into the jury box, admonished by the judge, and recessed until 1 o'clock today, and the taking of testimony proceeded in the absence of the jury.

[fol. 115] Thereupon the defendant called as a witness on his behalf—in the absence of the jury,—MRS. SUSAN M. HALEY, who being duly sworn by the court, testified as follows:

Direct examination.

By Mr. Mills:

Q. Will you state your name?

A. Mrs. Susan M. Haley.

Q. Your address?

A. 1131 Liberty, SE, Canton.

Q. Mrs. Haley, I believe you are the mother of this boy here, John Haley?

A. Yes, I am.

Q. Do you remember the night they arrested your son?

A. Yes, I do.

Q. About what time was it?

A. It was between 11 and 12 o'clock at night.

Q. What was the date, do you know?

A. October 19.

Q. Do you know who came there?

A. No, I don't. But they was all the names on this paper.

Q. How many men were there?

A. There were four, but two came into the house.

Q. Did they come in two machines?

A. They didn't have but one.

Q. Did they take your son with them?

[fol. 116] A. Yes, they came and asked to speak to him. I said they are in bed and they went in and asked where he had been. He said he had been to a foot-ball game. They were talking to the boy in the bathroom.

Q. Did they take him away then?

A. Yes, they did.

Q. Do you know what clothes he had on when they took him?

A. Yes, I do.

Q. Do you know the condition of that clothing?

A. Yes, I do. I have it here.

Q. Now, when did you see him again?

A. I did not see him until Thursday of the next week because they would not let me see him, only when visiting hours was at the county jail.

Q. What day was October 19th?

A. On Friday.

Q. And you did not see him until the following Thursday?

A. No.

Q. Did you see him at the city jail?

A. No. They told me I couldn't see him. They said I would have to talk to the Sergeant and then I could not see the Sergeant.

Q. Then you did not get to see him?

A. I did not get to see him.

Q. Then what did you do?

[fol. 117] A. Then I went over and Mr. Contie wasn't there. They wouldn't let him see him.

Q. Were you with Mr. Contie?

A. Yes, I were.

Q. What did they say?

A. They say I couldn't see him.

Q. When was it, the next day after they arrested him?

A. No. On Monday.

Q. Now then, what clothing did your son have on that night?

A. Here it is, brown pants and blue-shirt.

Q. Is this the shirt he had on?

A. Yes sir, that is the shirt he had on.

Q. What was the condition of that shirt then?

A. It were clean when he left home, and it wasn't torn.

Q. What is this on the shirt?

A. That is blood.

Q. And this? (Pointing)

A. That's blood.

Q. When did you get this shirt?

A. I got it Sunday.

Q. Sunday? What Sunday?

A. After they arrested him Friday night.

Q. Where did you get it?

A. I got it at the jail.

Q. And that was the condition it was in when you got it at the jail?

A. Yes sir, it was.

We offer defendant's Exhibit 1 in evidence.

[fol. 118] Q. Now, showing you another garment, what is that?

A. That's his pants.

Q. What condition were they in?

A. They were good. He had just took them from the cleaners that morning.

Q. Was that the condition they were in when you got them back.

A. That's like they were when I got them back that Sunday.

Q. That's when you got them back?

A. Yes sir.

These are marked Defendants Exhibit 2 and we offer them in evidence.

Court: Admitted in this part only, for that purpose alone.

Q. What was the condition of the boy? You can not tell what he told you. What did you see about him?

A. When I seen him, his neck was swollen.

Q. When was that?

A. At the county jail the next Thursday, his neck was swollen.

Q. What was his condition? What did he say about it?

A. His neck was swollen and his shoulder was skint. There was a skinned place on his shoulder and on his arm.

That's all.

Cross examination.

By Mr. Rogers:

Q. Where did you get these clothes?

[fol. 119] A. In the city jail.

Q. What clothes did he have on when — went to the county jail, what he has on now?

A. No.

Q. Did you take him clothes to the city jail?

A. Yes, I did. That's why they gave me these.

Q. What did you take up?

A. Clean pants and *and* a shirt.

Q. Where are they now?

A. The shirt is at home and the pants at the cleaner.

Q. When did you take them up?

A. On Sunday.

Q. Did they bring him back that night?

A. No, they didn't.

Q. When did they bring him back?

A. On Monday night.

Q. Did he have these clothes on then?

A. No.

Q. When did he get those clothes?

A. On Sunday I carried him clean clothes on Monday, and they brought him down and got the clean clothes.

Q. Did Mr. Contie go with you then?

A. No, he did not.

Q. When was the first time you and Mr. Contie were denied admission to the city jail?

A. Tuesday, after they carried him to the county jail.

[fol. 120] Q. It was to the county jail that Mr. Contie went with you?

A. Yes.

Q. Not over to the city jail?

A. He went over to the jail here. I wasn't with him then.

Q. You were denied admission at the county jail because it was visiting day on Thursday and you went on Tuesday?

A. I didn't get a chance to see him either place.

Q. What did your son have on the night he was arrested, at your house?

A. That night he had on those pants and that shirt.

Q. How about his coat and cap?

A. He didn't have a coat and cap.

Q. Didn't have a baseball cap in?

A. No.

Q. Didn't he have a baseball cap?

A. He had one, but he didn't have it on then.

Q. You remember the night Mr. Karam was shot?

A. Yes, I remember the night. I saw it in the paper.

Q. What was your telephone number?

A. 3-5522.

Q. Is that in your name?

A. No, it isn't.

Q. You did have a telephone, did you?

A. No, I didn't. That's the number of the telephone in the house.

Q. Whose house?

[fol. 121] A. In the house where I live at.

Q. Whose name is it in?

A. Will Marks' name.

Q. Is that the boy's stepfather?

A. He has no stepfather.

Q. He has no stepfather?

A. No sir.

That's all.

Thereupon the defendant, further to maintain the issues on his behalf, called in the absence of the jury the defendant JOHN HALEY, who being duly sworn by the court, testified as follows:

Direct examination.

By Mr. Mills:

Q. You are John Haley?

A. Yes sir.

Q. Your address?

A. 1131 Liberty Avenue, SE, Canton.

Q. How old are you, John?

A. Fifteen.

Q. Do you remember the night you were arrested?

A. Yes.

Q. What time was it, do you know?

A. Around about midnight, or 1 o'clock.

Q. Where had you been that evening?

A. I was to a football game.

[fol. 122] Q. That was the evening of the 19th. Who came down to arrest you?

A. Burnowsky was one. I don't remember the others.

Q. How many were there?

A. There were two car loads, I know, but I don't know how many men.

Q. What then did they do?

A. Well, one of them grabbed one arm and another grabbed the other arm, and one had me by the belt. When

we got to the car, they shoved me in, pushed me in, and I skinned my knee.

Q. Which knee?

A. The right knee.

Q. Who pushed you in the car?

A. I don't know which one.

Q. Where did they take you?

A. Up to the police headquarters.

Q. Do you know what room it was they took you in?

A. They took me upstairs to the detective bureau.

Q. Then what did they do up there?

A. He said "We know all about it. You might as well come clean," something like that.

Q. Did they lock the door?

A. Yes, they locked the door.

Q. Who did that?

[fol. 123] A. I don't know, don't remember which one, I think it was Young, but I am not sure.

Q. Who all was there at the time, do you know?

A. Wells was there, and Young and Burnowsky and some more. I don't know who they were.

Q. How many were there?

A. There were as high as 6 at one time.

Q. Do you know about what time it was when they took you in that room?

A. They took me straight into that room.

Q. About what time was that?

A. A little after midnight.

Q. Who proceeded to question you, if anyone?

A. I think it was Young.

Q. You think Officer Young?

A. Yes.

Q. And what did he say to you?

A. He said "We know all about it. You might as well come clean." I told him I didn't know anything about it.

Q. Then what did he do?

A. Smacked me across my face.

Q. How did he do that, with his open hand or how?

A. First with his open hand.

Q. How long did they keep you there?

A. They brought me down to the jail around 6:30.

Q. Around 6:30 in the morning?

[fol. 124] A. Yes.

Q. Took you down to the jail then?

A. Yes.

Q. During all that time, had they done anything to you in the way of violence?

A. That's all they were doing up there.

Q. Tell the court how they did.

A. One grabbed me by the collar, jerked me to my feet, smacked me across the face I don't know how many times. He turned me loose and I fell to the floor.

Q. Who did that?

A. Young grabbed me by the collar.

Q. Is this the shirt you had on?

A. Yes, this is the shirt I had on.

Q. What was the condition of that shirt when you put it on?

A. It was nice and clean and everything.

Q. Did you put that on to go to the football game?

A. Yes.

Q. And it was clean when they took you to the station?

A. Yes.

Q. Were there any tears in that shirt of any kind when you went to the station?

A. No.

Q. Any blood spots on it then?

A. No.

[fol. 125] Where did those blood spots come from?

A. He grabbed me on the back of the neck, and I found blood running down my back.

Q. Which one was that?

A. Young.

Q. And these trousers which are marked as Defendant's Exhibit 2, are they the ones you had on that night when you left home?

A. Yes.

Q. Were they torn that way when you were arrested that night?

A. They weren't torn when I went there.

Q. Do you know how they got torn?

A. Yes.

Q. How?

A. I think I snagged it on one of the doors. They pushed me up against the door.

Q. They pushed you against a door?

A. Yes.

Q. Which one did that, do you know?

A. I don't know which one it was that pushed me against the door.

Q. You don't know which one did that?

A. No.

Q. What else did they do to you, if anything?

[fol. 126] A. They showed me Parks's statement and said "Now you are going to make one exactly like that." I told them "No, I wouldn't." They *they* started smacking me all around the room. Finally I told them that I would do it.

Q. Did they tell you, before you signed that statement, that you had a right to refuse to sign it?

A. No.

Q. That you had a right to be represented by counsel, by an attorney?

A. No, they didn't tell me that, but they told, that's all.

Q. And - they tell you anything you said in that statement might be used against you?

A. No sir. He said it wasn't important.

Q. It wasn't important, told you that?

A. Yes. It didn't make no difference whether they had it or not.

Q. Now, when you did sign it, who was there?

A. Officer Young, Officer Wells, and Officer Burnowsky, and another man. I don't know who it was.

Q. There were four of them there then?

A. Yes.

Q. Is that the paper you signed, John?

A. I signed mine in ink.

Q. In ink?

A. Yes.

[fol. 127] Q. Where is the original?

Thereupon Mr. Rossetti left courtroom and returned with a paper.

Q. Is that it?

A. I don't know. But mine was signed with ink.

Q. I believe that is ink.

A. That one looks like mine. I think that is.

Q. There are some names as witnesses here. Are they there when you signed that paper?

A. No. They were back in the other room and they came out and signed it then.

Q. What?

A. After I signed it, they came into the room from another room and they signed it.

Q. Did they administer an oath to you? Did Quilligan ask you to swear that it was true?

A. He told me to raise my right hand.

Q. And that was Quilligan, was it?

A. I don't know. I don't know who that was.

Q. Then what was said about it?

A. Nothing was said then after I signed it, then they took me to the cell.

Q. Did you sign that paper of your own free will?

A. No.

Q. Does that represent the truth of this matter?

A. No.

[fol. 128] Q. Did you ask them to call your mother?

A. Yes sir.

Q. When was that?

A. That was after I was there a while. I don't know just how long.

Q. What did they say?

A. At first they told me they were not going to release me. So I said to call my mother and let her know. They said they weren't going to call anybody.

Q. Did you see anybody over there while you were in the jail, to represent you?

A. No.

Q. Any attorney?

A. No.

Q. Your mother?

A. No.

Q. Or anybody?

A. Nobody.

Q. Except the officers?

A. That's right.

Q. How long were you over there?

A. I was over there from around that Friday midnight until Tuesday around about noon, in the city jail. Just about noon.

[fol. 129] Q. Now, during that time, you had seen no attorney?

A. No.

Q. Nor your mother?

A. No.

Q. Nor anybody else in your behalf?

A. Nobody.

Q. Where were you taken then?

A. To the county jail.

Q. When did you see your mother?

A. That Thursday during visiting hours.

Q. Were you taken to Municipal Court?

A. No. They took me to Juvenile Court.

Q. They did not take you to Municipal Court?

A. No.

Q. When did they take you to Juvenile Court?

A. I don't know the date.

Q. You never were in Municipal Court at all, then?

A. No.

That's all.

Cross-examination.

By Mr. Rossetti:

Q. Now, Mr. Haley, you were picked up by the police about midnight on October 19, were you not?

A. Yes sir.

[fol. 130] Q. And brought up to headquarters?

A. Yes sir.

Q. Now, you told the police a few different stories, didn't you?

A. Well, If somebody was to pick on you, beat on your head a long time, you would tell something, too.

Q. Did you lie to the police when they first brought you in?

A. I had to tell them something.

Q. Then you did lie?

A. Yes.

Q. You did lie to the police, didn't you?

A. At first.

Q. You say you were hit, you were struck?

A. Yes.

Q. How many times?

A. I can't say how many times.

Q. Did you get any bruises?

A. Yes, I have a scar on my right hip.

Q. How many times were you hit in the face?

A. I can't say how many times.

Q. You have some idea, don't you?

A. No.

- Q. Were you hit there one, two, three times?
 A. I know it was numerous times.
 [fol. 131] Q. How many?
 A. I don't know how many times.
 Q. Five times?
 A. I know it was a number of times.
 Q. Would you say it was more than once?
 A. Yes.
 Q. Was it ten times?
 A. I can't say how many times.
 Q. Were you hurt when you got hit?
 A. Sure.
 Q. Did you get any marks on your face?
 A. I don't believe I did.
 Q. Were you hit in the eye?
 A. I was hit everywhere.
 Q. Did you get a black eye?
 A. I don't know if I did.
 Q. Did your face bleed anywhere?
 A. I believe my mouth was bleeding.
 Q. Your mouth?
 A. No, my nose. My nose I think was bleeding.
 Q. Did you wipe your nose with a handkerchief?
 A. I did not have a handkerchief.
 Q. What did you wipe it with?
 A. With my hand and cuff. They took me to the jail and I washed it with water.
 [fol. 132] Q. Now, the police asked you what you did the night of October 14, didn't they?
 A. Yes.
 Q. And at first you lied to them, didn't you?
 A. At first.
 Q. Then you told them another story, didn't you?
 A. At first I told them right where I was, and they said No, I wasn't there, and I was beat across the head.
 Q. Didn't you tell the police you and Lowder and Parks went to a show -hat night?
 A. Yes.
 Q. You had not, had you?
 A. No.
 Q. You did meet Parks and Lowder in the Cone Shop, didn't you?

Object.

Court: Sustained. I am hearing this only on voluntariness and involuntariness, and free will.

Q. Who did you go to the game with?

Object.

Objection sustained.

Q. Did you go to the football game?

Object.

Overruled.

A. Yes.

[fol. 133] Q. By yourself?

Deft. objects.

Sustained.

Q. You don't know how many times you were hit that night at the police department?

A. No.

Q. You were also kicked, you say?

A. That's right.

Q. And you say you were shoved?

A. Yes.

Q. What clothes did you have on that night you were picked up?

A. I had on the clothes there on the desk.

Q. And these are the clothes you had on on the night of October 14?

Object.

Court: You may go into the question of rips and blood on the clothes. You can go into that.

Q. Did you have on these clothes the day before you were arrested?

Object.

Court: You may ask if your point is to show that these rips and all the blood was on there before the night he was picked up. Go right to it, if that is your point.

[fol. 134] Q. Let me ask you. When was the last time you had these clothes on before you were arrested?

A. That night.

Q. The same night you were arrested?

A. Yes.

Q. And you had been to the football game?

A. Yes.

Q. Now, while you were at police headquarters, you did read a statement of Willie Lowder, didn't you?

A. No.

Q. Did you read a statement of Alfred Parks?

A. Yes.

Q. And Parks made a written statement to the police about this matter, did he not?

A. Yes.

Q. And he mentioned your name, did he?

A. Yes.

Q. Did you do that before you gave your statement to the police? Did you read that statement?

A. Yes, I read it first.

Q. And then you told the police what you had done that night, is that it?

A. I gave them their version of it.

Q. Whose version do you mean?

A. The police. The detectives.

[fol. 135] Q. What did you tell the police about Park's statement after you read it?

A. I told them it wasn't true.

Q. Did you then tell the police what you did that night?

A. They made me say what they wanted me to say.

Q. Well, what did they want you to say?

A. What I said in that statement.

Q. Then what you said in that statement is not true, is that it?

A. That's right.

Q. Not even about the gun?

A. That's right.

Q. You mean to say this gun was not taken from your father's home?

Object.

Q. I withdraw the question. Do you remember going back down to the house with the detectives that same night or the next day?

Object.

Q. The same day, the 20th?

Court: You may answer that. —

Deft. Excepts.

A. I did not go the next day?

Q. When did you go?

Object.

Overruled.

Deft. Excepts.

[fol. 136] A. I don't know the exact date. It was either Sunday or Monday.

Q. Whom did you go to the house with?

Object.

Overruled.

Deft. Excepts.

A. I don't remember the detective's name.

Q. Did you go to the house after you made a statement to the police?

A. Yes, I did.

Q. What did you do in the house?

A. They came there and got my blue coat and my green baseball jacket.

Q. What did you tell the officers?

Object.

Q. I withdraw that. Did you have these clothes on when you went back to the house with the officers?

A. I believe I did.

Q. While you were in the house, did you point out a drawer to the officers—(interrupted.)

Deft. Objects. He is trying to confuse the issue.

Court: You went into this. You showed this is not true. I have not had time to read it as yet. It is 5 minutes of 12. I will read it during the luncheon hour.

Thereupon court was recessed for luncheon recess and until 1 o'clock P. M.

[fol. 137] 1 P. M. same day

Jury back in the jury box.

Court: Ladies and Gentlemen: Apparently there is some more testimony to offer in the absence of the jury. Keeping in mind the same cautions given you earlier, you may withdraw to your rooms now.

Thereupon the jurors left the courtroom, and were absent during the taking of the following evidence.

Mr. Rossetti resumes questioning Deft. John Haley.

Q. Now, John; will you tell us again the names of the officers that slapped or struck you the morning you made the statement?

A. Young and Wells I think are the names.

Q. Anyone else?

A. There were others but I don't know their names.

Q. And that was on the morning of October 20, 1945?

A. Yes sir.

Q. Did anyone else strike you?

A. Yes, they were not the only ones. There were some more.

Q. That same morning?

A. That same time.

Q. You don't know their names?

A. No.

Q. Did Officer Burnowsky strike you?

[fol. 138] A. No. I don't think he did.

Q. Now, were you struck or hit at any other time?

A. No. Just that morning.

Q. That is the only time you had been hit by any policeman, is that right?

A. Yes.

Q. Do you remember what time it was after you made the statement that you went down to your house with Officer Burnowsky?

A. It was night, I know that, but I don't know what time it was.

Q. What day was it?

A. I don't know exactly the day.

Q. You say it was night-time?

A. It was in the night.

Q. Are you sure about that?

A. I am sure, positive.

Q. By the way, after you made the statement that morning, didn't the officers buy you sandwiches?

A. No. They did not buy me anything.

Q. They did not?

A. No.

Q. That's the only time you say any officers hit you. Is that right?

A. It was that morning.

Q. And they did not hit you any other time?

[fol. 139] A. No sir.

Q. Just one more question. John Haley, how soon did the officers take you down to your house after you made the statement?

A. I am not sure whether it was that following night, or the night after that. I am not sure.

Q. Was it in the early morning hours?

A. It was night.

Q. Was your mother at home when you got there?

A. No. She wasn't there.

Q. Your stepfather there?

A. I haven't got any stepfather.

Q. Was Will Marks there?

A. Yes, he was there.

Q. You gave another statement to the police, didn't you, John?

A. How do you mean?

Q. You gave another written statement to the police on the 22nd?

A. That's right.

Q. Anybody hit you that day?

A. No, but they threatened to.

Q. But they did not hit you then. You said so.

A. I said they threatened to hit me, and I knew what they did before. I knew what happened that morning in headquarters, and they said I would get the same.

[fol. 140] Q. But you said they only hit you that one day?

A. Yes sir.

Q. And when you gave a statement on the 22nd, nobody laid a hand on you?

A. But they threatened to.

Q. But you gave them the statement voluntarily then?

Object.

A. No.

That's all.

STIPULATION

There followed some talk among parties' counsel, with the following Stipulation resulting: It Is Stipulated and Agreed by and between counsel for the parties that Mr.

Leroy Contie, an attorney, of the Stark County Bar, was employed by Mrs. Haley, the defendant's mother, to represent him and that he went to the city jail on two occasions after said alleged confession was signed, and was unable to see the defendant, and was refused admission by the police authorities, and that he did not see him until after he had been transferred to the county jail, some days after that.

Court: There is a point where the Supreme Court of the United States has a decision. Can you agree on the facts as to this matter?

Court: It is admitted and conceded that the defendant in this case, after his arrest, was not taken into any court until after these confessions written documents that [fol. 141] are claimed to be confessions and in any event are statements and admissions, was never taken to a court until after they were obtained.

Court: I understand counsel for defendant contend that the Supreme Court of the United States has held a confession taken under those conditions is not valid and can not be used in a trial. This court never heard of any such thing. It is new. The Ohio courts have never passed on it I understand. It is new as to Ohio.

Mr. Rogers: I know nothing about it. I have not seen any brief nor anything to that effect. We are willing to meet whatever they may say.

Mr. Mills: McNabb vs. the United States, 318 U. S. 332, etc.

Thereupon counsel and the court discuss and consider certain law cases, the jury still absent. Later:

Court: In the brief time that the court has had to look into this question which he had designated as a new one to him and which I take it is new to the prosecuting attorney's office, I have got far enough to realize this is a serious question. The court would not think of deciding it at this time. The case relied on in the first instance by the defendant [fol. 142] appears in U. S. Supreme Court Reports 87 Law Edition, Oct. 1942 at page 332. The court has only had time to skim over it hastily, to say nothing about deliberating on it and studying it. That case originated in a Federal court. It is interesting to find that Judge Frankfurter wrote the opinion. The court recalls that when Justice Hughes quit the bench, the bar of America . . . So the court will have to study this matter and asks counsel on

both sides to bring to the court whatever they can find on this case. . . . Mr. Bailiff, you may call the jury in to the box.

Thereupon the jury returned to the jury box.

Court: Now, ladies *the* gentlemen. A situation has developed here which the trial judge greatly regrets. I think the jury understands there is a great desire to get through with this case as speedily as possible for a number of reasons. I think a very serious new question has arisen here, new to the law of Ohio and new to all the states. One that never entered the judge's mind. I know there is no Ohio decision on it. You understand, of course, the law is for the judge and the facts for the jury. I will say that any- [fol. 143] thing said by the lawyers or the court in urging a question of law to the court, or objections even when the jury is here and hears it, that all is not evidence and the jury should not give it any heed. Even so, it is better always if any serious question of law comes up and there is to be anything said by the lawyers or by the judge, it is better that be done in the absence of the jury. That's why you were excused while certain testimony was offered so the judge might know in advance what they would be. The court must spend time on this. That he shall do, using every moment he has. This removes the possibility of a session tomorrow morning. Between now and Monday morning the court will have some hours he can use on this matter. We will adjourn this case from this time until next Monday morning at 9 o'clock. The jury will not need to be here before 9 A. M. next Monday. In view of that adjournment I want to re-emphasize and reiterate by reference everything that has been said heretofore in reference to the conduct of each and every juror on this jury, and ask each juror as an individual and as a juror to follow [fol. 144] those cautions and admonitions implicitly, keeping your minds free and open. Do not begin to think of making up your minds. The time has not come when you should speak to another juror about this case. If any of you are together, come or go together at any time, don't mention this case at all. Above all, don't talk to anyone connected with the lawsuit, for your own protection, not to any lawyer, relative etc., etc. Don't read any newspapers wh-ch contain anything about the case. I am admonishing

you especially on that. Newspapers wish to publish news, but no juror should read anything on the subject until the case is finished and decided. Anything else counsel wish said to the jury? No. No.

Thereupon court was adjourned for the day and until 9 o'clock Monday morning, April 1, 1946.

9 A. M. Monday, April 1, 1946. Jury not in courtroom.

RULING ON ADMISSION OF EVIDENCE

Court: I see the defendant and everybody who is necessary is here now. All 13 of the jurors are in their jury rooms, waiting rooms. I take it we are ready to take up [fol. 145] this matter we left at the end of the week, assuming there is nothing either side wants to bring to the court's attention. However, the McNabb case was called to the court's attention, the court seeing a serious question had arisen, one that required careful investigation before ruling was made, especially in the light of this new Supreme Court case. The court examined that case very thoroughly. While it did not appear to him to be the establishment of a new policy on the part of the Supreme Court in the main, it may have in part. At any rate, it was enough of a change that one member of the supreme court wrote a dissenting opinion. The court has read that case carefully, analyzed it. Then he examined three more Federal cases that have been passed on by the supreme court of the U. S. since it issued that holding in the McNabb case. Those three cases indicate a very shadowy dividing line between the McNabb case and certain other cases, not an absolute change of policy of the supreme court of the United States, but a very shadowy distinction between cases that would fall within the law of the McNabb case and those that would fall outside the law of the McNabb case. After obtaining [fol. 146] what the court felt was an accurate picture of those federal cases,—and it is not unusual to find distinctions between law cases involved when they are in the federal courts in the first instance and are reviewed through the federal courts, and cases which come from a supreme court of a given state. In general perhaps not in general,—but very, very frequently in the construction of statutes of different states where the supreme court of the state from which the case comes,—where it has come into the

supreme court of the United States from the state supreme court, the United States supreme court will construe, where there has been a construction made by the state courts, statutes in conformity to the holding of the supreme court of the state.

That by no means do I find is an absolute hard and fast rule. In general, the court's opinion in the McNabb case indicates that it is not, and cites some 10 or 15 cases where the supreme court has not followed a ruling made by the highest court of the state from which it comes, even though a constitutional question is involved.

[fol. 147] I believe that this difference in construction applies ordinarily to questions that were not raised by the Constitution of the United States. Where a question raised by the constitution of the United States is involved, the supreme court of the United States disregards any construction put on the constitution of the United States by a state supreme court. If any of you,—and I know counsel for the defendant have read the McNabb case, when Justice Frankfurter starts out he starts from two points, one a public policy point and the other a constitutional question. However, before he comes to the basis for the ruling of the supreme court, the constitutional question is disregarded. While he indicates amendments to the constitution of the U. S. he says it is not necessary to consider them,—that is the constitutional questions in that case. Now so much for the federal cases.

The court then went pretty carefully, after examining the McNabb case and three other cases of the U. S. Supreme court,—the court then took up these 3 state supreme court cases that are cited by counsel for the defendant, and finds they have in the main followed the McNabb case, although [fol. 148] there are other questions involved. Just what the holdings in those three states, Kentucky, Illinois and Alabama, I think,—just what the holdings of those states were before these three last cases came, with reference to the admission of evidence admitted to be unlawfully obtained, the court does not know. It might take considerable time to find that. However, the court does know what the holding of the supreme court of Ohio were and have been for years. Every lawyer, especially since the days of the enactment of the intoxicating-liquor amendment, has had that question up frequently. While the supreme court of the United States in those cases did refuse admission to

evidence along that line unlawfully obtained, the supreme court of Ohio has persistently taken the other view and has held that question would have to be reached in a different way. So we know what the holdings of the supreme court of the State of Ohio have been as to the admission of evidence unlawfully obtained. The unlawful obtaining of evidence, as far as this court knows, in Ohio, has never been evidence unlawfully obtained by violation [fol. 149] of the two state statutes that are here involved. The court assumes, and I think it was agreed here,—in fact the officer who testified testified to that effect, and there is no evidence to the contrary, and I think the state admitted here, that so far as this evidence is concerned, Section 13,432-3 G. C. and 13,432-15 were violated in connection with obtaining this evidence. This court went into that question once carefully and remembers he sent a copy of that opinion to every chief of police in the county hoping they might not be taken unawares as to the law.

The first of these sections, 13,432-3, emphasized the duty of any officer arresting a person, whether with a warrant or without a warrant, emphasized the duty of taking that person to a court of competent jurisdiction immediately. Immediately of course would be, as soon as he could get him there. The other section, 13,432-15, makes it mandatory, and that is a penal statute punishable either by fine or imprisonment or both, making it an offense for any officer having in his custody an arrested person, to review to [fol. 150] allow any attorney to immediately visit a prisoner. So I take it from this situation as shown by the undisputed evidence and as admitted by the State here, that this situation comes to this court with the violation of both those statutes, one of which carries with it a penal sentence, either a fine or imprisonment or both.

Now then, what the supreme court of Ohio will say in such matters this court does not know, and I think nobody else knows or will not know until they pass on it. The questions that have been before the supreme court of Ohio heretofore seem to have been questions of public policy. I remember when the case of *Thos. Warden vs. Mills*—

The question arises whether violation of such statutes vitiates evidence, or whether an arrested person who has been wronged is confined to other remedies such as mandatory injunction or mandamus or whatever method he might choose to follow. At any rate, it raises a serious

question. The court is not unmindful that it is almost impossible to take a case on review from a trial judge after a holding of not guilty. The supreme court of Ohio on [fol. 151] everything they have ever had, has not followed the Supreme Court of the United States on this public policy matter. If this court should sustain this motion it might be the end of this case always. It might be. There might be one way this court has in mind that might be reached. But it is doubtful whether it would ever be reviewed. That would mean here an individual trial judge might be the final arbiter in a matter where the Supreme Court of Ohio has almost uniformly followed a different rule in questions that are so nearly akin to this case, and that certainly would work a bad situation. The bench and the bar of this state should all know of this law, and quickly.

It would be unwise, impractical, for a trial judge to set himself up as against seven judges of the Supreme Court of Ohio, who have followed a course for years,—although this court can not say they have ever had the precise question,—but they have had the question so nearly like it.

There is a difference between the Supreme Court of Ohio and the other supreme courts, some of them,—where it looks as though the Supreme Court of Ohio was permitting [fol. 152] the ultimate decisions in matters of that kind to be made by a jury. The general rule of admission of evidence is that is an absolute question for the judge, excepting where there is conflict of evidence. Now in practically every case in Ohio that has been before the Supreme Court there is a conflict of evidence, wherever voluntariness and free will comes in. In this case there is a conflict of evidence on whether this defendant was warned of his constitutional rights. There is a conflict of evidence on whether any rough handling was done. But there seems to be no conflict on the violation of these two statutes. However, it looks to this court as though the supreme court has always had in mind that the jury is the final arbiter as to whether that evidence is competent or not. It would be on part of this evidence. It would be all but impossible to separate the two parts. Under this attitude of the Supreme Court of Ohio, who takes its position where there is any conflict, the court permit- the *the* evidence to go to the jury, and in his charge, charge the jury as to the [fol. 153] law and let the jury determine whether the evi-

dence was voluntary and of free will, instructing the jury that if it was not voluntary and of free will, instruct the jury that the jury should absolutely disregard it and not treat it as evidence. If the contrary obtained, the jury should give such weight as they saw fit to give it in the light of all the evidence and all the circumstances disclosed by the evidence.

The court has in mind following that course in this case in the hope there may be a review of the issues of this case, a speedy review, so that the bench and the bar of this state may not be plagued with this question for some years to come. From what the court has said, the lawyers, at any rate, have in mind the contemplated ruling, which the court now makes, namely that the motion is overruled, the motion to keep this evidence from going to the jury.

Exceptions to the defendant.

Thereupon the jury was returned into the courtroom and took their places in the jury box.

[fol. 154] Jury now back in box.

Court: Ladies and Gentlemen of the Jury: You will recall shortly before adjournment on Friday afternoon a question was raised which made it necessary for the court to excuse the jury. I want to repeat one thing I said to you before. That is with reference to questions of law. With questions of law the jury has absolutely nothing to do. What the lawyers have said on such things and what the court has said about admission of evidence are or no concern to the jury, unless the judge tells you otherwise. So at any time whenever a question of law comes up, or a question as to admissibility of evidence, or minor matters where it does not seem necessary to send the jury out, remember what lawyers say to the court and the court says on such things, that is not evidence. It is of no concern to the jury. So, all the way through this case, unless in the court's charge there should be an occasion where it would become a matter for the jury, and then the court will so instruct the jury.

Mr. Jones: Defendant excepts to the introduction of any testimony bearing on alleged confession or admissions of the defendant for the following reasons: 1. The alleged [fol. 155] confession was not voluntarily given. 2. The alleged confession was given prior to the time when the defendant was taken before any court or magistrate, and

was obtained in violation of Section 13,432-2, and 13,432-15 G. C. 3. The State has failed to prove the corpus delicti.

Court: Overruled. Exception to Deft.

Thereupon Officer Wells, who was on the witness stand at the time the jury was excused from the courtroom, was returned to the witness stand and direct examination was resumed by Mr. Rogers.

Mr. Rogers: Will you read the last question to Officer Wells before the jury was withdrawn?

Court Stenographer reads:

Q. Tell us what Haley told you about his activities on the night of October 14th.

Q. Go ahead now, Mr. Wells, and tell us.

A. He told me that on the night in question he had left home and went to Teresa's Cone Shop in the 900 block on South Cherry. At the Cone Shop he met Al Parks and Willie Lowder. While they were there, Lowder said to him and to Parks that if he had a gun he could do most anything. A short time later, he said he and Parks left, went to his home, and he left Parks standing outside while [fol. 156] he went into the house, went up to the bathroom, went to a trunk and from this trunk he obtained a gun.

Court: Just a minute. That has not been asked for. We are introducing now the question of the voluntariness and free willness of the confession, that is now being detailed has been raised. The court in the absence of the jury heard certain testimony. The court is admitting that evidence now to the jury conditionally. By that I mean he is letting the jury hear it and will instruct the jury further and the jury eventually will determine from all the evidence and all the surrounding circumstances, whether this confession was voluntary and of free will on the part of the defendant. Then when the jury comes to consider the case, if they find it was voluntary, and free will on the part of the defendant, they will consider it and give it just such weight as they see fit to give it, in the light of all the circumstances as revealed by all the testimony in the case. If they conclude it was not voluntary on the part of the defendant, they will absolutely disregard it and not even consider it as evidence and give it no weight. I am giving the jury that preliminary explanation so you

may better understand the instruction the court will give you in his charge. You may proceed.

[fol. 157] A. Going back over, he had told us another story about his activities.

Deft. objects and asks to strike it.

Court: It is stricken and the jury will disregard it.

A. And from this trunk in the bathroom he obtained a gun.

Q. Continue from there.

A. He said he got this gun and went to a closet that was there under the stairway, where he got six shells. He took the gun outside where Parks was, showing it to Parks, and where it was loaded, where he loaded it. Placed six shells in the clip and pushing one into the chamber of the — and putting on the safety. They then went to the Cone Shope, he said, and they met again with Lowder and they told him they had a gun now. The gun was given to Lowder and at that time there was a suggestion brought up that they go out and look for a place to hold up. So they left, walked around the southeast section looking for a lonely spot to hold up. They walked around the northeast business district, and then they went on to the southwest business district. They went down McKinley Avenue to Navarre Road, turned east on Navarre Road [fol. 158] until they came to the Karam store at Navarre and South Market. They looked in the window there and seen a man in there with Mr. Karam. They decided to wait until this man left. During the wait, it was brought up that Lowder and Parks would go into the store and Haley was to stand on the outside and act as a look-out. And the man in the store then left, and they went in. Parks and Lowder went in, and Haley stayed on the outside with his back to the door, acting as a lookout. And if he saw anyone approaching, he was to tap on the window. While he was standing there and while the other two were on the inside of the store, he heard a shot and he heard someone holler. When he heard the shot, he immediately ran — ran east on Navarre Road to the first alley east of Market and then south on the alley, where he met up with Parks and Lowder. They continued on over in the southeast section where they split up behind the Felber Biscuit Company, which is located just across the street from his home.

He then went on, went on home, went into the house and went to bed. Later on, during the next day or so, he met up with the other boys again, and he asked them what happened to the gun. He was informed by one of them, [fol. 159] of the other boys; that they did not want to discuss this incident. And he asked again about where the gun was. He was informed that the gun had been done away with forever. We talked to him about the type of gun it was, and he said it was an automatic 32 calibre blue steel colt.

Q. Who was present when he made that statement to you?

A. The written or the oral?

Q. The oral statement.

A. The oral statement? Detective Young.

Q. Was that statement later reduced to writing in your presence?

A. It was.

Q. Who reduced it to writing?

A. Sgt. Burnowsky.

Q. I believe that's all.

Cross-examination.

By Mr. Jones:

Q. Now, Officer Wells, what date was it when this questioning of Haley took place?

A. It was on the 20th of October.

Q. Do you remember what day of the week it was?

A. It was Saturday.

Q. What time on October 20th did you start talking to Haley?

[fol. 160] A. I started talking to Haley about one o'clock in the morning.

Q. How long did you continue talking to him?

A. I talked off and on to him for approximately three-four hours.

Q. Had someone else been talking to him before you started in that night?

A. They had.

Q. Who?

A. Sgt. Burnowsky.

Q. How long had Sgt. Burnowsky talked to him?

A. I can't tell you.

Q. Were you present when he was arrested?

A. I was not.

Q. Do you know when he was arrested?

A. You mean what time it was?

Q. Just the date.

A. The date was on the 19th.

Q. Do you know the time of day?

A. No, I don't.

Q. Do you know whether it was morning, afternoon or evening?

A. I can not say that.

Q. What time did you close your questioning of him that night?

[fol. 161] A. I can't say the exact time.

Q. Approximately, Mr. Wells?

A. I would say approximately 3:30 or 4 o'clock.

Q. In the morning?

A. In the morning.

Q. During the time you were questioning him, who else was there?

A. Det. Young.

Q. Anyone else?

A. Not at the time we were questioning him.

Q. During that period of time from 1 o'clock in the morning until you stopped questioning him, who else was in that room?

A. No one.

Q. You were there alone?

A. Not all the time.

Q. Which is true? Were you there alone, or weren't you?

State objects to the question.

Court: Can you answer the question?

A. Will you repeat the question please?

Question read by reporter.

Q. Which is true? Were you there alone, or weren't you?

A. I was alone part of the time with him.

[fol. 162] Q. During the rest of the time, who was there?

A. Det. Young.

Q. Who else?

A. That's all.

Q. Was Burnowsky there?

A. He was in.

Q. Was Quilligan there?

A. I did not see him.

Q. How big was that room where you were questioning him?

A. A pretty fair sized room.

Q. As big as this courtroom?

A. No.

Q. Half as big?

A. I can't say how big it is.

Q. Now, you can surely give us an idea how big a room would be, can't you?

A. I can give an approximate estimation.

Q. Will you do so, please?

A. I would say it is about,—approximately 20 feet wide, —maybe 30 feet long.

Q. Now, during that time, you say Officer Young was there?

A. That's right.

Q. And Burnowsky came in later?

[fol. 163] A. He came in later in the morning.

Q. Was Capt. Quilligan there at all?

A. He was there later in the morning.

Q. So you made a mistake when you said a moment ago that Quilligan was not there?

State objects to that.

Sustained.

Q. Was Officer Rinehart there?

A. I did not see him there.

Q. Will you answer my question. Was he or was he not there?

A. Not at the time we were questioning him.

Q. Between 1 o'clock and the time the questioning ended, was Rinehart there at all?

A. No.

Q. Was Officer Criss there?

A. No.

Q. Was the assistant city solicitor, Wilbur Weaver there?

A. No.

Q. Not at any time?

A. I did not see him.

Q. Was there anything in that room that prevented you from seeing people who might be in it?

Object.

Overruled.

[fol. 164] A. No.

Q. So when you say I did not see him,—do you mean he was not there?

A. I mean he wasn't there.

Q. At any time during that night, did you explain to Haley what his constitutional rights were?

A. Just before the written statement was taken.

Q. Who did that?

A. Sgt. Burnowsky.

Q. Do you remember testifying on this subject on last Friday?

A. Yes.

Q. Do you remember being asked that same question by Mr. Mills?

A. I do.

Q. And remember answering it No?

A. I thought he was referring to the oral statement.

Q. Do you remember answering that question on Friday?

A. Yes.

Q. Which time were you telling the truth,—then or now, Officer Wells?

Object.

Court: Sustained. The jury will determine that question.

Q. Who explained his constitutional rights to him?

A. Sgt. Burnowsky.

[fol. 165] Q. What did he say to him?

A. He read just what we have on the top of the statement.

Q. What is that?

A. I would have to check it. I can not remember just the words.

Q. You don't know what his constitutional rights are, do you?

Object.

Overruled: Answer the question.

A. I do.

Q. Then, what was explained to him?

A. That this statement being taken, would be that he was charged with the crime.

Q. What crime?

A. That he was charged with murder and that he has a right to either make it or not. And that it would be used against him in a court of law, either for or against him.

Q. What time during the night did this take place?

A. I would say around 3:30 or 4 in the morning.

Q. After all this questioning that you have testified about, is that right?

A. That's right.

Q. During that night, Mr. Wells, did Haley, in your presence, ask to telephone to his mother?

A. He did not.

[fol. 166] Q. Isn't it a fact, Mr. Wells, that he asked to telephone to his mother and it was refused him?

Object.

A. I answered that.

Objection overruled. You may answer.

Stenographer read question and answer upon the request, of Court.

Court: You may answer.

A. He did not ask, did not ask me to call his mother.

Q. Did you hear him *any* anybody else?

A. I did not.

Q. Were you in the room the entire time that you have testified about, from 1 o'clock up until three or four o'clock, —or rather for three or four hours after one o'clock?

A. Not the entire time, no.

Q. Will you describe to the jury, please, Officer Wells, how Mr. Haley was seated in the room, and where you were sitting or standing, as the case may be?

A. He was sitting in a chair, just inside the door to the room. I was at a desk.

Q. How far apart were you and Haley?

A. I would say approximately 3—4 feet.

Q. And that was the case all the time during that night?

A. Sometimes I would move around.

[fol. 167] Q. Did he move around at all?

A. I can not remember if he did.

Q. Did you hit him at any time during that night?

A. I did not.

Q. Who did?

A. No one.

Q. You say to this jury, Mr. Wells, that no one struck this man during that entire evening, while you were in there?

A. That's right.

Q. Were his clothes torn by anyone during that evening in that room?

A. No.

Q. How was he dressed?

A. He had on a white shirt and dark trousers.

Q. When you got through that questioning on the morning of the 20th of October, were those clothes torn?

A. No.

Q. Was there any blood on his shirt?

A. No.

Q. Officer Wells, do you remember attorney Contie, Leroy Contie, coming around to the police headquarters on the morning of the 20th, Saturday morning, and asking to see Haley?

A. I did not see him.

[fol. 168] Q. Do you know anything about his coming over there at that time trying to see Haley?

A. I do not.

Q. After this questioning was finished,—strike that please. What time in the morning was it when this questioning was finished and this written statement was completed?

A. I don't just remember the exact time.

Q. Can you give an approximation of it?

A. I would say around 5 or 5:30 in the morning.

Q. What was done with Mr. Haley then?

A. After the statement was taken, he was given sandwiches and coffee, which he ate, and then his picture was taken.

Q. Then what was done with him?

A. I presume he was returned to his cell.

Q. Don't you know?

A. I do not.

Q. Did you leave then?

A. I left.

Q. Where was Mr. Haley when you left?

A. He was still in the outer office of the Detective Bureau when I left.

Q. On what floor is that, of the police headquarters?

A. Second floor of the Safety Building, that is, not in the police part proper.

That's all.

[fol. 169] Redirect examination.

By Mr. Rogers:

Q. You have referred to a picture being taken. Who took that picture?

A. Ralph Spence.

Q. Who is Ralph Spence?

A. Reporter for the Repository.

Q. About how long after Haley's statement was taken, was this photograph taken by Ralph Spence?

A. Just a short time later.

Q. Now, you were present when the written statement was signed, were you?

A. I was.

Q. I will ask you whether or not Haley had seen any other written statements by anybody before he signed his?

A. He had.

Q. Whose statements had he seen before he signed his?

A. A. Parks' and Willie Lowder's.

That's all.

Thereupon the State, further to maintain the *the* issues on its behalf, called as a witness one GEORGE W. YOUNG, who being duly sworn by the court, testified as follows:

Direct examination.

By Mr. Rossetti:

Q. You are Officer George W. Young?

A. Yes.

[fol. 170] Q. What is your address?

A. 1122 Wertz, S. W., Canton, Ohio.

Q. I believe you are with the Canton Police Department?

A. Yes sir.

Q. What is your rank?

A. Detective.

Q. Are you a detective at the present time?

A. Yes.

Q. Where you a defective on October 14, 1945?

A. I was.

Q. How long have you been with the police department?

A. Since August 7, 1934.

Q. Now, Detective Young, going directly to the night of October 14, 1945, where were you on that day, do you remember?

A. I was working the four to twelve shift.

Q. From 4 in the afternoon to 12 at night?

A. Yes.

Q. Did you have another officer working with you?

A. I was working with Detective Wells at the time.

Q. Did you have occasion to go to the scene of the Karam Killing?

A. I did.

Q. What time did you arrive there?

A. Why, it was just about midnight, 12 o'clock or a minute or two later.

[fol. 171] Q. Will you tell the jury what you saw when you arrived there?

A. We pulled up at the Karam store and saw the ambulance turning around in the center of the street, going north.

Q. Now, Officer Young, will you tell the jury what you did after you got there?

A. I entered the store and contacted three witnesses there. And asked Detective Wells to keep anyone from coming into the store, and to get all the information on the outside and listen to the radio.

Deft. asks to strike.

Court: No conversation. The talk between the officers is stricken and jury will disregard it. That is not competent.

Q. Did you see any other officers there?

A. I did.

Q. Whom did you see?

— Officer Roman and Officer Bober.

Q. Did you make an investigation and did you talk with witnesses there?

A. I did.

Q. Did you make an inspection of the premises?

A. I did.

Q. What, if anything, did you find?

[fol. 172] A. I first found blood spots in front outside and inside the store. I found three witnesses inside and I talked to them.

Q. Where were the blood spots?

A. Just outside the door on the—on the stoop, and there were several spots just off the steps going into the store. And there were several small spots as you entered the store on the store floor, with the farthest ones inside the door, away from the door, approximately 5 or 5½ feet.

Q. That was inside the store?

A. The farthest one on the inside. And then at the outside door a couple small spots leading to the outside of the store.

Q. What, if anything, else did you see or find there?

A. I saw the shell that was found on the floor by Officer Bober.

Q. What was done with that shell?

A. I gave it to Kenneth Wells to hold for evidence.

Q. Did you find anything else?

A. I don't think of anything else.

Q. Did you do anything else that evening or that night, Officer?

A. Yes, sir.

Q. What else did you do?

[fol. 173] A. We went out to search for the gun. I searched the grounds where a gun might be hidden,—in the properties around the store within a block each way and found nothing there, that would indicate any shooting, or anything had been thrown away. We tried to search for those suspects—(interrupted)

Deft. objects and asks to strike.

Court: That last is stricken as not competent.

Q. When was the first time you saw this defendant, John H. Haley?

A. The first I saw the defendant Haley was the night we arrested him.

Q. What date was that?

A. That was about midnight or 12:15 of October the 19th or 20th. It was around that time.

Q. Did you arrest the defendant?

A. I assisted in the arrest.

Q. Who else was present when he was arrested?

A. Sgt. Burnowsky and I went inside the house and there was Officer Criss and Rinehart who stayed on the outside.

Q. Where did you take Haley to?

A. To police headquarters.

Q. Where in headquarters?

A. To the Bertillon room, detective bureau.

[fol. 174] Q. At that time, did you have any conversation with him?

A. Yes, I did.

Q. Who participated in that conversation?

A. Sgt. Burnowsky, Criss, Officer Rinehart, Detective Wells and myself.

Q. Were all those officers in this room at the same time?

A. No, not all of them, not all the time.

Q. Were you in there constantly, continuously, yourself, Officer?

A. Not constantly,—periodically.

Q. Did you have any conversation with this defendant relative to the killing of William Karam?

Object.

A. Yes sir.

Objection overruled.

Deft. excepts.

A. I asked the defendant—(interrupted)

Q. Tell what conversation you had with the defendant, John Haley?

A. I asked this young man as to his movements, his travels, and what he had done—

Deft. asks to strike out.

Question and answer read upon court's request.

Q. I withdraw the question.

[fol. 175] Q. Will you tell the jury what the defendant Haley told you that night?

A. Well, the first thing he told me was that he and his boy friend were to the show, I believe he said it was Loew's they had been to, and that he, returning home, stopped in front of the Club and he was asked to come in and refused, stating he went on home around 11 or 11:15. Then he changed his story and said that he went down to Teresa's

Cone Shop and got to talking to two of his boy friends there.

Deft. asks to strike out changed his story.

Court: Yes, that is a conclusion. That is stricken and jury will disregard it.

Q. Officer Young, just tell what John Haley told you this night in the detective bureau.

A. He told me he went to the show, and returned home at 11 or 11:15. Then he told me that he went to the Cone Shop and met two boy friends there and they took a walk. And then he returned there about 11:30. Then I asked him questions about his boy friends, and who they were. And I asked him if he ever went to the Karam confectionery and he said No. We talked along that line and by that time the other officers had ready the statements of the other two boys.

Object.

Court: Just give the conversation now, that is what he asked.

[fol. 176] Q. Detective Young, did you show John Haley anything at that time, that night?

A. I did.

Q. What was it?

A. I showed him the statements of Parks and Lowder.

Q. Did Haley read those statements?

A. He did.

Q. Both of them?

A. Yes sir.

Q. Then what was the next conversation that you had, after he read those statements?

A. I asked him a question.

Q. Tell what you said and what he said.

A. The question was if he understood the statement, and he told me he did.

Q. Then what did he say?

A. He said he understood what he was reading there. Then I asked whether it was true, and he said "I just understand what I am reading here". I asked if he was involved in it, with Parks and Lowder, as they said, and he said No. Then we went back over all that again and I asked the same questions as before.

Q. What did he say then?

A. Finally he told me he was the man with Al. Parks and Willie Lowder when they were at the Karam store and began telling the store.

[fol. 177] Q. What did Haley tell you then?

A. He told us then that he left his house and went to Teresa's Cone Shop on Cherry at about 7 or 7:30. There he met Alfred Parks and Willie Lowder, his friends. They were standing in the store talking when suddenly Parks stated "If I only had a gun I could get most anything". Haley said "I know where I can get a gun. My stepfather or father had one in his home. I suggested Al Parks and I go and get it." After they got to his home, he left Parks standing outside of his home and he went in to the house and up into the bathroom and got the gun out of a trunk, and then got six shells from the cupboard or closet under the stairs. Coming out, they stood in front of the house, loaded the gun and put one in the chamber and put the safety on the gun. He carried the gun back to the Cone Shop where they met Willie Lowder. They then showed Lowder the gun, and he took the gun and said "Let's go rob some place". Then the three of them walked on down Cherry trying to spot some place they could rob. They went around the southeast end and then up into the northeast business district, and then they went back down into the southwest, and from there they were going to go home, and then they walked [fol. 178] down McKinley, turned east on Navarre and to Karam's, and they saw some one man standing in Karam's store, talking to Mr. Karam. They decided to wait outside until this man left and then rob Mr. Karam. Haley was to stand outside, supposed to stand outside as a watch, and the other two boys went in. When Haley heard the shot he ran, going east on Navarre to Ite Court and south on Ite Court to the alley where he ran into Parks and Lowder. They then ran east to the park and he left them in an alley there. During that time, he asked what happened, and the boys told him, Parks and Lowder told him, to forget about the whole thing. He left the boys and went back of the Biscou-t Company and went home and to bed. That's what he told me.

Q. Did you have any further conversation with Haley after that? That same night?

A. Then Burnowsky came and we had him listen and I was present when the statement was taken.

Q. You were present when the written statement was made by Haley?

A. Yes sir.

Q. Did he sign the statement?

A. He did.

Q. Did he sign the statement voluntarily?

Object.

Sustained.

[fol. 179] Cross-examination.

By Mr. Mills:

Q. When did you start in with your inquisition?

A. I believe it was about 12:30 or quarter to one A. M.

Q. When did it conclude?

A. I am not just sure the exact time it was. But I would say about 3 hours later, approximately.

Q. Wasn't it about 5:30 in the morning?

A. It was when the statement was taken.

Q. Well, that's when you finally concluded?

A. Yes sir.

Q. About 5:30 in the morning.

A. Concluded taking the statement.

Q. Which you began at about what time?

A. I would say between 12:30 and quarter to one, we started to talk to him.

Q. So it took approximately five hours or more, did it not?

A. With the written statement, I imagine it did.

Q. Now, you were on the stand the other day when the jury was not here, and I asked you some questions then, didn't I?

A. Yes.

Q. Now, before you started in to talk to this boy, you did not tell him that he had the privilege of refusing to answer your questions, did you?

[fol. 180] A. Not to my knowledge, I did not.

Q. You did not tell him he had a right to be represented by a lawyer, did you?

A. No, I did not.

Q. Now, when you brought him up to the police headquarters there was about four or five policemen and detectives there, weren't there?

A. Yes.

Q. There were that many when you arrested him, and then you started to ask him questions, didn't you?

A. I did not.

Q. Did anybody, just as soon as you got him in there, start to question him, immediately?

A. I believe he was——(interrupted).

Q. You did not take him to a cell?

A. No.

Q. But you started in with this inquisition immediately, did you not?

A. Yes sir.

Q. And you knew this was a young boy, didn't you,—only about 15 years old?

A. Yes.

Q. And in the presence of all of you officers, you started in asking these questions, didn't you?

A. Yes.

[fol. 181] Q. And you did question him for an hour or an hour and a half?

A. Yes sir.

Q. Then you would go out for a while, wouldn't you?

A. Yes.

Q. And somebody else would question him?

A. Yes sir.

Q. You did it by relays, didn't you?

A. More or less, yes sir.

Q. And in the meantime, you had beat this boy?

A. No sir.

Q. Tore his shirt?

A. No.

Q. Picked him up and threw him down on the floor, and kicked him, didn't you?

A. No sir.

Q. You saw the shirt exhibited here, didn't you?

A. No sir.

Q. You did not see that shirt?

A. No.

Q. Did you question him, and then you would go out and someone else question him. Then you would come back in again. That's your policy over there, isn't it?

A. Yes, more or less, one of them.

Q. But more than less, isn't it?

[fol. 182] Object.

Sustained.

Deft. exepts.

Q. Then a different policeman or two different ones would start in while you were out, and where you left off?

A. The same ones in that case.

Q. The same ones?

A. Yes.

Q. Who did all this questioning?

A. I told you.

Q. Who?

A. Officer Burnowsky, Officer Criss, Rinehart, Detective Wells and myself.

Q. Five of you. And that took you from a little after midnight until 5:30 in the morning, you five policemen, in relays, to get the story from this boy, didn't it?

Object to form of question.

Objection overruled.

A. Yes sir.

Q. Do you say now that no detective, including yourself, or any police officer on this occasion, did not inflict punishment on this boy before you got him to sign this alleged confession?

A. Absolutely I do.

[fol. 183] Q. You are the main witness, the main detective over there, that does all of this punishment, *weren't* you, Mr. Young?

Object.

Sustained.

Q. Did you have any gloves on you at that time?

A. No sir. No.

Q. Use them on this boy?

A. No. No.

Q. Is that the first time you ever saw that boy?

A. The first time, that night, if my memory serves me right.

Q. I believe you said that Parks said if he had a gun he could do most anything with it?

A. I believe that's the way he said that.

Q. You believe that's the way he said it. Well, you had already questioned the other two boys, hadn't you?

A. No sir.

Q. You already had a statement from them, didn't you?

A. I had it, but I did not take it.

Q. Who did? You had it, you say?

A. I had it, but I did not obtain it.

Q. Who did obtain it?

A. The other officers and the superior.

Q. Who were they, do you know?

[fol. 184] A. Captain Quilligan, Officer Boles, Officer Crawford, and I believe one of the Burnowskys was there. Wein maybe several others, and Captain Harrison. I don't know when these statements were taken and in whose presence. I was not there.

Q. When did you have this statement? When you first started questioning this boy?

A. It was there, available.

Q. Did you have it?

A. No. I did not have it.

Q. When did you get it? How long did you question him before you got it?

A. I would say about $\frac{3}{4}$ hour myself.

Q. About $\frac{3}{4}$ of an hour yourself?

A. Myself, yes.

Q. Then you did read some of that statement to him, didn't you?

A. I only read a short paragraph of it, and then let him read it.

Q. You did read that to him and you did say that that's the way it happened, didn't —, and he did say No.

A. No. I didn't do that. I only read a part of it to him, and he said that he did not believe me. And so I gave it to him to read himself.

Q. Isn't it true you read it to him, and then you said [fol. 185] Now, that's the way it happened, and he would say "No". Then you would strike him?

A. No, that is not true, I didn't have any reason to.

Q. You were just there in conversation with him for about three, four, five hours, to get a voluntary statement, weren't you?

A. Yes sir.

That's all.

Redirect examination.

By Mr. Rossetti:

Q. Detective Young, can you tell us approximately how many policemen and detectives worked on this killing?

Object.

Sustained.

Q. All right. Can you tell us approximately how many policemen and detectives worked on the investigation of this case?

Object.

Sustained.

State excepts.

[fol. 186] After recess.

Thereupon the State, further to maintain the issues on its behalf, called as a witness one FRANK J. BURNOWSKY, who being duly sworn by the court, testified as follows:

Direct examination.

By Mr. Rogers:

Q. Will you state your name?

A. Frank J. Burnowsky.

Q. Where do you live?

A. 1207 Colonial Blvd. NE Canton, O.

Q. How long have you been in the police department of Canton, Ohio?

A. I was appointed March 30, 1937, and I have finished 9 years.

Q. And on October 14, 1945, were you a member of the police department?

A. I was.

Q. In what capacity?

A. Sgt. of detectives.

Q. As such, did you have occasion to investigate the shooting of William Karam?

A. I did.

Q. In that investigation, did you have occasion to see John H. Haley, the accused in this case?

A. I did.

Q. Well, where did you have occasion to see Mr. Haley and when?

[fol. 187] A. I was one of the officers that picked up John Haley at his home on the night of the 19th of October, 1945.

Q. After you picked up John Haley in his home on the night of October 19, 1945, what did you do with him?

A. Took him to the detective bureau in the police department.

Q. And did you talk to him there?

A. I did.

Q. Who was present when you talked to Mr. Haley?

A. Well, Officer Criss, Officer Rinehart were there part of the time. And I was in on part of the questioning, and Detectives Young and Wells.

Q. After the questioning of Young and Wells, did you or did you not take a statement from John Harvey Haley?

A. I did.

Q. Was that statement reduced to writing?

A. It was.

Q. Who did that?

A. I did.

Q. On typewriter?

A. That's right.

Q. Who was present at that time?

A. Detective Wells and Detective Young.

[fol. 188] Q. I hand you herewith what is marked for identification in this case as State's Exhibit D, and ask you if you ever saw that before?

A. I did.

Q. Where did you see it?

A. I typed it and asked the questions in the Detective Bureau on the morning of October 20, 1945?

Q. Going to the last page of that statement, will you look at the signature?

A. Yes sir.

Q. Was that signature signed in your presence?

A. It was. It was.

Q. When this statement was signed, had there been any threats or coercion used on Haley?

A. Absolutely none.

Q. Any promises made to him?

A. No sir.

Q. Was he maltreated in any way?

A. He was not.

Q. By you?

A. No sir.

Q. By anybody else that you know of?

A. No sir.

Q. I will ask you also whether or not, before the time that John Haley signed that statement he was shown the statements of anyone else about this killing of Mr. Karam?

[fol. 189] A. Whether I showed him any other statements?

Q. Yes.

A. No, I did not.

Q. We offer this in evidence, Your Honor.

Object.

Court: Did you say, Officer Burnowsky, that you saw the defendant in this case, John H. Haley, sign his name to this at the point I am indicating with my pencil?

A. I did.

Court: I take it the objection is the same one operating here, and in the light of the examination in the absence of the jury, I take it you don't care to cross-examine now before the court passes on this?

Mr. Mills: No.

Court: It is admitted.

Mr. Rogers: I wish permission to read it to the jury.

Court: Yes, you may read it. Counsel for defendant saying they do not care to cross-examine at this time, you may read it.

Thereupon Mr. Rossetti read the statement as follows:

[fol. 190] "State of Ohio, County of Star, ss. October 20, 1945.

The following is a statement of one John Harvey Haley, colored, age 15 residing at 1131 Liberty Ave. SE Canton, Ohio.

John Harvey Haley you are under arrest and being charged with delinquency for your participation in the armed robbery and murder of William Karam and we are going to ask you to make a statement and tell the truth about your activities during the evening and *nite* of Oct. 14, 1945, from 6 P.M. on, but before you do we want to inform you of your constitutional rights, the law gives you the

right to make this statement or not as you see fit. It is made with the understanding that it maybe used at a trial in court either for or against you or anyone else involved in this crime with you, of your own free will and accord, you are under no force or duress or compulsion and no promises are being made to you at this time whatsoever.

Do you still desire to make this statement and tell the truth after having had the above clause read to you?

A. Yes.

Examination.

By Sgt. Frank J. Burnowsky:

Q. What is your true full name?

A. John Harvey Haley.

Q. Where do you live?

A. 1141 Liberty Ave. Se, Canton, Ohio.

Q. What is your age?

A. 15.

Q. What is your birth place and date?

A. August 2, 1930 at Canton, Ohio.

Q. Do you attend school, if so where?

A. McKinley High School.

Q. What grade are you in?

A. Senior.

Q. John Harvey Haley we are going to ask you to relate to us your activities on Oct. 14, 1945 from 6 P.M. until October 15, 1945 at 2 A.M.

I left home about 6:30 and went down to Theresa Cone Shop and thats where I met Willie and Al, and we got to talking and then he said Al Parks said "If I had a gun I could do almost anything" so I told him my [fol. 191] "father had one, so we went over to my house and Al he waited outside and I went in and got the gun, it had six shells, then we went back to the Theresa Cone Shop and met Willie there, we could — think of any place to go so we walked around, we walked around until about quarter of 12, then we came past the store, and we saw a man inside talking to this owner Karam, so we waited outside till he left and then I stook outside while they went in, then I heard a shot, and I got out of there, I heard Karam holler and I run east on Navarre Rd. SE to an alley not quite before Housel Ave. and then I met up with Al and Willie and we then kept running straight down until we came to the park and then

they went through the park and I left them behind the Felber Biscuit Co. and went home and went to bed.

Q. In the previous answer you use the names of Al and Willie who do you mean?

A. Al Parks and Willie Lowder.

Q. Do you know where these boys live?

A. I don't know the address. Willie lives on Nimisilla SE by the tracks and Al lives by the Junk Yard on Py. Pl. SE.

Q. When you went to get the gun who went with you?

A. Al.

Q. You mean Al Parks?

A. Yes.

Q. Where was Willie Lowder?

A. I am not sure if he was there when we left but he was there when we got back to Theresa Cone Shop.

Q. Did he know that you and Al Parks were going after the gun?

A. No.

Q. When did he know that you got a gun?

A. When we came back we told him.

[fol. 192] Q. What time was this that you went after the gun?

A. Let me see about 7 or 7:30 I don't know the exact time.

Q. Did you have a conversation with Al Parks and Willie Lowder about this gun before you and Al Parks went after it?

A. No, Willie didn't know anything about it until we came back with it.

Q. Where did you get this gun?

A. My father had it in a trunk at the house.

Q. Which room was this trunk in and describe the trunk.

A. In the bath room, it's a big trunk and has lots of drawers in it.

Q. Where in the trunk was the gun kept?

A. In the bottom drawer.

Q. Who was at the house when you got the gun.

A. Didn't nobody see me but my mother and father were both there but they were back in the kitchen.

Q. Did they know that you came home with Al Parks?

A. He was outside.

Q. What kind of a gun was this?

A. It was a 32 automatic.

Q. Can you describe it more fully.

A. It was a colt.

Q. What color was it?

A. Sort of a bluish color.

Q. How many bullets did it have in it?

A. I got six shells.

Q. Where did you get the shells?

A. My father had them under a stairway there is a little closet back there.

Q. The trunk—the gun was not loaded in the trunk is that right?

A. No.

[fol. 193] "Q. How many bullets did you take and do you know the make of the bullets.

A. I took six but I don't know the make of them.

Q. When did you load the gun.

A. When we got it outside.

Q. Who loaded it?

A. I did.

Q. Who else was present when you loaded it.

A. Just Al.

Q. Who carried the gun.

A. I loaded it and carried it down to Theresa Cone Shope on So. Cherry.

Q. Then what happened when you got to the cone shop with the gun.

A. Met Willie and it was his idea to go out and rob some place, he didn't say where.

Q. We walked all over town, trying to find some lonely store. Finally we decided to go home and we come down McKinley Avenue SW to Navarre Rd., then we walked east on Navarre Road, then we got to the store and we saw a man in there and then we decided to wait until that man goes and try that place. We waited until he left then they went in.

Q. Who went into the store?

A. Al and Willie.

Q. Where were you.

A. I stood outside and watched, lookout.

Q. Who had the gun when you reached the Karam store?

A. Willie was carrying it.

Q. Did you make any plans while you were waiting for the man to leave the store.

A. Only thing Willie said was Him and Al was going in and I was to stay out and watch.

Q. Were there any signals planned in case someone approached?

A. Yes, I was supposed to tap on the window.

[fol. 194] "Q. Who entered the store first?

A. Both of them went in I don't know which one went in first.

Q. Were you watching the holdup from the outside.

A. I had my back to the window, I was watching up and down the street.

Q. Just tell us where this store is located that you were holding up.

A. Market and Navarre.

Q. Where were you standing on the outside.

A. I had my back to the window. I was watching up and down the street. I was standing right in front of the soor so I could watch both Navarre and Market.

Q. What was Mr. Karam doing when you first noticed him.

A. He was cleaning up behind the bar where they have ice cream cones and stuff.

Q. Was there any command issued by either Al or Willie to Mr. Karam.

Q. I don't know. I was outside.

Q. When did Willie Lowder get the gun from you.

A. At Theresa's Cone Shop.

Q. Did he carry the gun during the entire walk around town when you were looking for a place to hold up.

A. Yes.

Q. Where did he carry the gun during this walk.

A. I don't know where he carried but I know that he had it.

Q. Did you see him take it out prior to going into the Karam store.

A. They told me to keep a sharp lookout and they went in and I didn't see the gun but I know that Willie was carrying it.

Q. Did you hear any shots fired.

A. One.

Q. Did you see Willie and Al leave the store.

[fol. 195] "A. No when I heard a shot I left.

Q. What time did you go into Karams Confectionery to hold him up.

A. I didn't go in.

Q. Well what time was it that the three of you arrived at the Karam store for the purpose of holding him up.

A. It was about a quarter of twelve, near midnight.

Q. What date was that.

A. It was Sunday on Oct. 14 near midnight.

Q. Did you notice any struggle between either Al or Willie with Mr. Karam in the store.

A. No.

Q. Who suggested the holdup of Karams store.

A. Willie.

Q. During this statement you have used Willie and Al frequently. Give us the full names of the Willie and Al that you have reference to in this statement.

A. Willie Louder and Al Parks.

Q. Showing you a black "pork pie" hat, Wormser make and I will ask you if you have ever seen this hat before.

A. I don't know if that's the hat but he had a hat like this.

Q. Have you ever had this gun out of the house on any other occasions.

A. No.

Q. Does your father know that you took the gun.

A. I don't think he does.

Q. What is your mother's and father's name.

A. My mother's name is Susan Haley and my father's name was E. B. Haley, but he left us when I was a little baby and I have a stepfather by the name of Will Mack.

Q. What time did you three leave the Cone Shop on South Cherry looking for a place to holdup.

A. Right about 8:30 or 9 P. M.

[fol. 196] - "Q. Do you know what P. M. means.

A. Yes, it means afternoon.

Q. Did you look over any other places that you were about to hold up.

A. We looked around and couldn't find any lonely spots so we decided to go home and then came to Karams.

Q. Just tell us where all you walked trying to find a place to hold up.

A. We walked up and down Cherry NE. and SE and all around N.E. and we walked all around S.W. and to, we then walked on McKinley SW to Navarre and we came to the Karam store.

Q. When was the bullet placed in the chamber of the automatic.

A. Just as soon as I loaded it, then I put the safety on.

Q. Did Willie and Al know how to handle and operate the safety on the gun.

A. I suppose so they looked it over good.

Q. John Harvey Haley did you know that a holdup was going to take place at Karams Confectionery at 1133 Market S-.

A. Yes we were looking for a place and when we saw this store we decided to hold up the store.

Q. Have you ever been arrested for any other charge.

A. No.

Q. Is there anything that you wish to add to this statement.

A. Not that I can think of.

Q. Everything that you told us in this statement is the truth is that true and correct.

A. Yes.

Q. Do you read and write the English language?

A. Yes.

— After having read this statement do you understand it?

A. Yes.

[fol. 197] "John Harvey Haley, being duly sworn deposes and says that he is the party named in the foregoing statement and that the facts contained herein are true and correct as he verily believes.

(Signed) John Harvey Haley. Sworn to before me in my presence the 20th of October, 1945 A.D.

(Signed) J. B. Quilligan. J. B. Quilligan, Notary Public, State of Ohio. My Commission expires Aug. 3, 1948. Witnesses: Anthony A. Burns, Orville S. Shafer."

Court: The exhibit is admitted.

Mr. Rogers continues examination of Sgt. Burnowsky.

Q. Sergeant Burnowsky, after that statement was taken, withdraw that. You did the typing on this statement?

A. I did.

Q. About how long did it take you to do that?

A. Oh, pretty close to two hours, or a little more.

Q. After that statement was taken, what if anything was done with John H. Haley?

A. His photograph was taken along with the other two boys. We took him to his house at 1131 Liberty Ave South-east.

Q. How long after the statement was taken?

A. It was 10 after 6 o'clock on October 20th, that morning.

Q. You took him down on Liberty to his home?

A. Yes.

[fol. 198] Q. What did he do there?

A. He showed us the trunk and the bathroom. We were interested in getting more shells.

Court. Tell only what you did, what he did.

A. He showed us where he got the bullets. We looked in the box and could not find any automatic shells. There were six ringfire bullets in the box. Will Mack, his stepfather, was there. We confronted the boy with Will Mack about the gun, and he denied he owned the gun, Will Mack did.

Q. What did Haley say in your presence? And Mack?

A. He told him that was the gun that he left him shoot at New Year's time, and he denied he had a gun. Said he had one some time before but that it was not a colt.

Q. Was Mrs. Haley there when her son was brought down there to the home?

A. I am pretty sure she was.

Q. What officers accompanied you?

A. Haley was handcuffed to Officer Rinehart, and Officer Criss was along,—the three of us.

Q. Was that before or after he had signed the statement?

A. After he signed the statement.

Q. I hand you herewith what is marked for identification as State's Exhibit C, and ask you if you ever saw that before?

[fol. 199] A. That's the bullet I observed carved out of the back of Mr. William Karam.

Q. Who gave you that bullet?

A. Doctor Hendershot in Mercy Hospital.

Q. What did you do with it?

A. I initialed it "F. B.," being my initials, but then I put it in a cellophane envelope and turned it over to Captain Pfister.

Cross-examination.

By Mr. Jones:

Q. What time did you go down to arrest Haley?

A. It was pretty close to midnight on October 19,—11:30 to 12 o'clock.

Q. And you took him directly to police headquarters?

A. We did.

Q. Who was with you when you went down there?

A. Detective Young and I went into the house. Officers Criss and Rinehart were around outside the house.

Q. Was that all of you?

A. I think that was all. We went down in two cars, the four of us.

Q. Did you take Haley back in the car with you?

A. We did.

Q. Was he handcuffed?

A. I don't remember. I don't think he was then.

[fol. 200] Q. Who else was in the car?

A. Officer Young was driving, and I don't know if we took another one of them with us, or whether there were just the two of us. I don't remember.

Q. When you got to headquarters, where did you take him?

A. Back to the identification room in the detective bureau, on the second floor of the Safety Building.

Q. Is that where he was all of the time he was being questioned?

A. He was there all the time he was being questioned until I was called back in.

Q. What time were you called back in?

A. I was out at Myers Lake arranging for a row boat, and I am judging the time about 3 o'clock. I have no way of telling definitely.

Q. Did you go back into this same room where Haley had been all this time?

A. They brought him to the detective bureau room.

Q. When was that?

A. They called me in and when I came in Young and Wells told me he had given them a story on the Karam murder.

Deft. moves the last part be stricken.

Court: It is stricken, what the other officers told him and the jury will disregard it as being incompetent.

Mr. Rogers: It was in the presence of the defendant.
[fol. 201] Court: Was Haley there at the time?

A. Right at the time, he was not there.

Court: Then it is stricken.

Q. When you started to question Haley after you got back, was it in this same room where he had been questioned before that?

A. No, it was not.

Q. Was it on the same floor?

A. It was.

Q. Was it in the next room?

A. No, the identification room is in the southwest part of the second floor. It is on the east side of the detective bureau.

Q. When you took him over to the other room, who went along?

A. Officers Young and Wells.

Q. Anyone else?

A. That's all.

Q. Were they there too during the time you were questioning him?

A. They were.

Q. Was anyone else there at any time?

A. Only when we concluded the statement.

Q. Who was there then?

A. Captain Quilligan notarized it and saw Haley sign it, and the two witnesses I sent out to find.

[fol. 202] Q. Had Captain Quilligan been there all during the questioning?

A. No, I don't think he was.

Q. Did you call him in when you were ready to have it notarized?

A. I did.

Q. Did he ask any questions of Haley?

A. None at all,—other than swear him.

Q. Now, when you arrested him, and brought him up to headquarters, he was not put in a cell, was he?

A. No.

Q. He was taken directly upstairs?

A. That's right.

Q. About what time was it when you concluded taking this written statement?

A. Oh, I would judge it was pretty close to 5, or 10 after 5.

Q. On the morning of October 20th?

A. That's right.

Q. What was done with Haley then?

A. Spence from the Repository was there and he wanted a photograph of the three, three detectives, and I knew he took a photograph of the boys.

Q. Then what was done?

A. We took him to the home, to his home to see about the gun.

[fol. 203] Q. After you were finished at his home, what did you do?

A. Brought him back and put him in a cell.

Q. What time was it when you got back and put him in a cell?

A. Well, I would say probably 6:30 or quarter of 7. That's the approximate time.

Q. So at that time he had been in custody of the police for about 7 hours?

A. Well, he was officially booked at 12:30 A. M. on the 20th.

Q. But actually you arrested him between 11:30 and midnight on the 19th?

A. Pretty close to that.

Q. Now, Sergeant, when you started questioning Haley, did you explain his constitutional rights to him?

A. Right at the time?

Q. When you first brought him in?

A. Right at the time when I first brought him in, I did not.

Q. Nobody else did, either?

A. Not to my knowledge.

Q. When, if at all, did you explain his constitutional rights to him?

A. At the time I took the voluntary statement.

Q. What did you tell him his constitutional rights were?

A. That he had the right to make this or not, and that [fol. 204] it would be used either for or against him or anyone involved with him.

Q. You did not tell him he had a right to counsel if he wished that?

A. He did not ask that.

Q. Will you read the question?

Reporter read question above.

A. I did not.

Q. And nobody else did?

A. Not to my knowledge.

Q. At the time you took this written statement, he had not been taken into Municipal Court, had he?

A. Well, that was about 3 o'clock in the morning—

Q. Will you repeat the question?

Reporter read question.

Object.

A. No.

Q. And he had not been taken before a Justice of the Peace, had he?

A. Not when I took the statement.

Q. He had not been taken before the Juvenile Court, had he, then?

A. Not at the time we took the statement.

Q. How long have you been a member of the Canton Police Force?

A. I have finished 9 years.

[fol. 205] Q. You are familiar, are you not, Sergeant, with the duties of a peace officer with reference to taking an arrested person before a court?

A. I am.

Q. What is your duty in that regard?

A. Within a reasonable length of time.

Q. Within a reasonable length of time?

A. Yes sir.

Q. You don't think it is your duty to take him before a court without unnecessary delay, do you?

A. That's right. I think the statute says that, without unnecessary delay.

Q. You are familiar with the right of an accused person to have counsel, are you not?

A. If he asks it.

Q. You saw fit in this case, on this occasion, to disregard those rights, did you?

Object.

Sustained.

Q. Now, Sergeant, when you started to ask questions of Mr. Haley in connection with the taking of that written statement, how much of the typing that now appears on it, was there?

A. None whatever.

Q. None whatever?

[fol. 206] A. That's right.

Q. What was your procedure that night when you started to type?

A. I first talked to him verbally,—got the details so I would be familiar with them. I typed out the above clause, read it to him very clearly and distinctly, and asked him if he understood it, and he said he did.

Q. When you read it to him, Officers Wells and Young were in the room, weren't they?

A. They were.

Q. And they were within hearing, were they?

A. They were alongside.

Q. So whatever you said to Haley they heard?

A. That's right.

Q. No mistake about that, is there?

A. I wouldn't think there would be any.

Q. Sergeant, while you were there any time during that night, did you strike Haley?

A. I did not.

Q. Did you see anybody else strike him?

A. No sir.

Q. Did you see anybody knock him down?

A. No sir.

Q. How was he dressed?

A. Well, I think he had a white shirt on and a brown pair of pants.

[fol. 207] Q. When the questioning was concluded that night, that shirt was torn, wasn't it?

A. It was not.

Q. And there was blood on it?

A. There was not.

Q. And his pants were torn?

A. They were not.

Q. They were all in good condition?

A. They were.

Q. Did you have any part in questioning Haley from the time he arrived at police headquarters until you started to take this statement?

A. Yes, I talked to him for a short time when we brought him in first.

Q. Were Wells and Young in the room at that time?

A. I don't think,—but Criss and Rinehart. There were 5 of us that questioned him from time to time.

Q. The way that worked, a couple of you would be in the room and the others would be out; then after a while the two who were working and questioning, would go out, and some more would come in. Is that right?

A. That depends. There might be one talking to him, and he will go out and another one come in. And maybe two of them will talk to him then.

Q. It was done in relays; was it?

A. That's right. When Young and Wells were in, there was nobody else went in. All the rest had left. They went to where the gun was supposed to have been thrown, in the [fol. 208] creek, allegedly.

Q. So from the time you left there and you got back, you think that Wells and Young were the only ones that questioned him?

A. Well, I am presuming that.

Q. But you don't know?

A. I wasn't there.

Q. Now, when you got back and started questioning Haley again, before you took the statement, who else was in the room?

A. Detectives Young and Wells.

Q. Did the three of you stay together there all the time this statement was being taken?

A. We did.

Q. Did they participate in the questioning?

A. No. They did not. I asked all the questions and did all the typing then.

Q. They just sat there?

A. That's right.

Q. Why was it necessary for three of you to be there while you were doing all the questioning and typing?

Object.

Sustained.

Q. During the time you were there that night, did Haley ask permission to telephone to his mother?

A. He did not, not to my knowledge. He did not ask me.

[fol. 209] Q. You don't know whether he asked anybody else or not, do you?

A. No. I do not.

Q. Do you remember on Saturday morning, October 20th, when Attorney Contie came over to the police headquarters and wanted to see Haley?

A. I never saw Mr. Contie.

Q. Do you know whether he came over there or not?

A. I heard through hearsay that he was there.

Q. And he was refused admission, wasn't he?

A. That I don't know.

Q. But you know Mr. Contie did not see Mr. Haley while he was at the city jail, don't you?

A. Well, I don't know that.

Q. To your knowledge, he did not see him, did he?

A. Well, to my knowledge, I don't think he did.

Q. You know, as a matter of fact, don't you?

A. No, I don't know, as a matter of fact, because I had never seen Attorney Contie, and nobody discussed him with me as to whether he could see Haley.

Redirect examination.

By Mr. Rogers:

Q. Officer Burnowsky, you were asked whether this man was taken into court, municipal court, before he was questioned. Was he ever taken into Municipal Court?

[fol. 210] A. Not to my knowledge. He was taken to Juvenile Court.

Q. The morning you took him to his home and he talked to you and Officer Rinehart in the presence of Mr. Mack, what clothing did he have on? Was it the same he had on when questioned by you?

A. Certainly. He never had a change of clothing.

Q. And his parents were in the room while you questioned him?

A. We questioned the father? I am pretty sure the mother was there.

Q. And that was the same clothing he had on before?

A. The very same.

Q. And the same he had on when he was brought in?

A. That's right.

Recross-examination.

By Mr. Jones:

— When was he taken to Juvenile Court?

A. I don't know the date. I had nothing to do with bringing the case to the Juvenile Court. I concluded my work after I got that statement, the statement and the search for the revolver.

Q. He was taken to the Juvenile Court after he left the city jail and had been taken to the county jail?

A. Yes, he went from the city jail to the county jail.

Q. When was he taken to county jail? Withdraw that, [fol. 211]

A. That I don't know. The record would show.

Q. But it was after the 20th, wasn't it? When he was taken to the county jail.

A. He was still at the city jail on the 20th. That's all I know.

Q. When he was taken to the county jail, was he wearing the same clothing as he was at the time of his arrest?

A. I can't say that. I did not see him after the morning of the 20th.

That's all.

Thereupon the State, further to maintain the issues on its behalf, called as a witness one RALPH SPENCER, who being duly sworn by the court, testified as follows:

Direct examination.

By Mr. Rossetti:

Q. Will you state your name?

A. Ralph Spencer.

Q. What is your address?

A. 1004—18th Street N. E.

Q. Where are you employed, Mr. Spencer?

A. At the Repository.

Q. In what capacity?

A. I am a reporter assigned to the police station.

Q. Mr. Spencer, what are some of your duties in connection with your position?

[fol. 212] A. Well, it is my duty to read the reports made by the police and transcribe those reports to news stories.

Q. Do you also take pictures?

A. Occasionally, yes. It is not my regular job, but I do it now and then.

Q. Do you remember the evening of October 14, 1945, or early morning of October 15?

A. I do.

Q. Were you in the police station that night?

A. No, I don't believe I was.

Q. Where were you, do you remember?

A. At home.

Q. Did you arrive at the police station at any time the morning of October 15, 1945?

A. Yes sir.

Q. Can you remember what time?

A. I assume it was my regular time to get to work, — around 8 o'clock, October 15th.

Q. Do you remember whether or not you were at the police station the night of October 19, 1945?

A. No. I was not.

Q. Up to midnight?

A. Yes, I was not there.

Q. Now, from midnight on would be October 20th. Do you remember whether you were there then?

A. Yes sir, I was.

[fol. 213] Q. Tell us what time you got to the station then?

A. My best recollection is that I got there about one o'clock, between 1 and 2 in the morning.

Q. Had you been called?

A. Yes sir.

Q. Do you remember, Mr. Spencer, whether or not you saw this defendant there at that time?

A. I did.

Q. What time did you see him?

A. I would say between five and six in the morning.

Q. And where, in the police station, did you see him?

A. I saw him in the newspaper room in the Detective Bureau.

Q. What, if anything, did you do?

A. At that time, at 5 or 6 in the morning?

Q. Yes.

A. I took his picture along with two other boys.

Q. Who are the other boys?

Deft. objects.

Court: Objection to the question as it stands is sustained.

Q. Mr. Spencer, showing you what has been marked for identification as State's Exhibit E, do you know what that is?

A. Yes sir. That is a picture which contains this defendant.

Q. Where was that taken? First when?

[fol. 214] A. Between five and six o'clock in the morning of the 20th of October, 1945.

Q. Who took the picture?

A. I did.

Q. Who developed the negative?

A. Our photographer at the Repository.

Q. Has that been in your possession since it was taken?

A. No sir.

Q. Who has had it?

A. Captain Pfister of the police department.

Court: Of course this will not become competent until after you have connected it up.

Q. Mr. Spencer, do you remember how Mr. Haley was dressed that morning when you took the picture of him?

A. He was dressed in shirt and trousers.

Q. What color shirt was it?

A. I think it was white.

Q. What color were his trousers?

A. Other than they were dark, I don't know.

Q. Did you see any evidence of a dark shirt at the time you took the picture?

Object.

Q. All right. What was the condition of his shirt?

Object.

Q. I withdraw the question. Tell the jury what the condition of Haley's clothes were when you took that picture [fol. 215] of him?

Object.

Overruled.

Deft. excepts.

A. I would say that they were normal. I saw nothing. It was just a shirt and a pair of trousers. I saw nothing different from any shirt.

Deft. asks to strike "saw nothing different etc."

Court: That is stricken and jury will disregard that part of the answer.

Q. Did you notice the condition of Haley's face when you took the picture of him?

A. I did.

Q. What was it?

A. It was the same as it is now.

Q. Is this a fair representation of Mr. Haley on the morning of October 20, 1945?

A. It is.

Mr. Rossetti: We now offer it in evidence, the picture, Your Honor.

Court: In its present condition it is refused admission. It will have to come to the court in different condition than it is now. Refused at this time.

Cross-examination.

By Mr. Mills:

Q. Why did you go there to get that picture?

Object.

Sustained.

Exception. Let him go.

[fol. 216] Mr. Rossetti: We have now taken the picture of Mr. Haley from the others that were on it originally, and we now offer Exhibit E in evidence in its present condition.

Mr. Jones: The witness said he did not develop it and it has not been in his possession since that time.

Court: The court will hold this for the present. It may be able to be admitted in rebuttal. We will now recess for our noon recess. Remember all the cautions that have been given you heretofore.

Thereupon court recessed for the noon luncheon.

One P. M.

Thereupon the State, further to maintain the issues on its behalf; called as a witness one **CARL RINEHART**, who being duly sworn by the court, testified as follows:

Direct examination.

By Mr. Rossetti:

Q. Will you state your name?

A. Carl Rinehart.

Q. Where do you live?

A. 1382 Crescent Rd., S. E., Canton.

Q. What is your occupation?

A. Policeman in the City of Canton.

A. For how long have you been such?

[Vol. 217] A. Since 1937.

Q. Were you working on the evening of October 14, 1945?

A. No.

Q. Were you working on the evening of October 19th, and the early morning of the 20th, 1945?

A. I was.

Q. Did you have occasion to see the defendant, John Haley, that evening or early morning?

A. I did.

Q. Which was it, Officer, evening or the early morning?

A. So far as I can remember, it was around midnight. I am pretty sure that's when it was.

Q. Did you participate in the arrest of this defendant?

A. Yes sir.

Q. Were you accompanied by anyone?

A. Yes sir.

Q. Other officers?

A. Yes.

Q. Did you participate in the questioning of this defendant, John Haley?

A. I did at first, yes sir.

Q. Were you present when the defendant made a statement?

A. No. I was not.

Q. Were you in the police headquarters when he made the statement?

A. No, I was not.

[fol. 218] Q. What did you do after the statement was made by this defendant, Officer?

A. What did I do?

Q. Yes.

A. After the statement was made, Sgt. Burnowsky and Officer Criss and myself went to the home of John Haley in an attempt to recover the gun that was used in the shooting.

Q. What time did you go to the home of this defendant after the statement was made?

A. As near as I can remember, it was 5:30 or 6 o'clock in the morning of the 20th.

Q. Did you go inside the house?

A. Yes sir.

Q. And were you with John Haley?

A. Yes sir, the subject was delivered to me.

Q. Tell the jury what part of the house you and the defendant went into?

A. We went in the house and directly inside the room proper we turned to the right, which led into the living room, where there is a hall-way. There we turned to the left to the bathroom door. I went inside the bathroom and he showed us a trunk where he said he had got the gun, that he got from his stepfather.

[fol. 219] Q. Tell the jury what defendant said about the trunk?

Mr. Mills: We object to all this on its voluntariness. To all this line of testimony.

Overruled.

Defendant excepts to this in particular and all of this line of testimony.

A. He said that that was the trunk where his stepfather had kept the gun, and he had got same from that trunk.

Q. Did the defendant say anything else in that connection at the time?

A. Well, he made one statement to his stepfather, I believe the name was Will Mack, that he had taken the gun from this trunk on New Year's Eve, and that at that time his stepfather had let him fire a shot that New Year's Eve.

Q. What was the next thing that the defendant Haley and you did?

A. We returned him to headquarters.

Q. Was there anything else that the defendant showed you at his home?

A. We looked for the shells from this gun, but we could not find any then.

Q. Was there anything else?

A. Not at that time. We returned later on.

Q. To refresh your memory, officer, was there anything said about clothes?

[fol. 220] A. At that time, no. I don't believe there was.

Q. Did you go to the home of John Haley at any other time?

A. Yes, we did, on the 22nd of October, Officer Criss and myself went to the home at the request of a superior officer. I can't say just which one.

Q. Did John Haley go with you?

A. No sir, not at that time. He was confined to the county jail then.

Q. What, if anything, did you do that time?

A. We picked up a green base-ball cap and purple reversible coat.

Q. What did you do with the coat and cap?

A. We took that out to the county jail and asked him if that was the coat he was wearing on the night of the 14th of October, the night of the shooting. He said it was. We took the cap and coat back to headquarters and tagged them.

Q. Who was present when you went out to the county jail with the cap and coat?

A. Officer Criss and myself.

Q. Did you ask Haley about the cap and coat, if they were his, etc.?

A. Yes, we did.

Q. Tell the jury what he said?

A. He said that they were his and that he was wearing [fol. 221] that coat the night of the shooting.

Q. Showing you what has been marked for identification as State's Exhibit F, will you take a look at that?

A. (Witness looking at exhibit) Yes sir.

Q. Tell the jury what that is?

A. This is the coat.

Q. Where did you get this coat?

A. We got this coat at the home of John Haley, at 1131 Liberty Avenue, SE.

Q. Is this the coat that you showed to John Haley when you went out to the county jail?

A. Yes sir.

We offer this in evidence, Exhibit F.

Court: It is received.

Q. Showing you now what has been marked for identification as State's Exhibit G, will you look at that, please?

A. Yes sir. That is the base-ball cap that he said he was wearing the night of the shooting.

Q. Where did you get this cap?

A. From the home of John Haley on Liberty Avenue.

Q. Is this the cap you took out to the county jail to show to John Haley?

A. It is.

Q. What did he say about it?

A. He said that it was his cap and that he was wearing [fol. 222] it the night of the shooting.

Mr. Rossetti: We offer Exhibit G in evidence, Your Honor.

Court: Received.

Cross-examination.

By Mr. Jones:

Q. Mr. Rinehart, what time was it when you went out to arrest Haley that night?

A. As near as I can remember, it was around midnight.

Q. That was on October 19th?

A. That's right.

Q. What time was it when you went out there again on the morning of the 20th?

A. I would say 5:30 or 6.

Q. What time did you get back to headquarters that morning, Officer?

A. I can't say exactly now.

Q. Well, approximately?

A. Right after we left the home.

Q. How long did you stay at Haley's house?

A. At that time,—I don't remember what time it was.

Q. Were you there as much as an hour?

A. I don't remember.

Q. What time were you supposed to go off duty that morning, officer?

A. We were working the 3 to 11 shift, I believe, P. M.

Q. You were not on duty that night at all from midnight [fol. 223] until 6 A. M. then?

A. During the vacations we were working irregular hours.

Q. Then that was not your regular shift?

A. No. It was not my regular shift, but we were working overtime.

Q. When you got back to headquarters with Mr. Haley that morning, what did you do with him?

A. We turned him over to our superior officers.

Q. What was done with him then, do you know?

A. That I can not say, because we left to go down to the creek to dredge for the gun.

Q. Where was he when you last saw him?

A. In the detective bureau.

Q. On the second floor there, over police headquarters?

A. Yes, sir.

Q. When you went down to arrest him, who went along with you, officer?

A. Detective Young, Officer Bober, Officer Criss and myself.

Q. How many cars did you take?

A. Two cars.

Q. Two cars. Coming back, did you ride in the same car with Mr. Haley?

A. Yes.

Q. Who else was in that car?

A. I believe there was—I can't remember now.

[fol. 224] Q. Remember how many of you there were in that car coming back?

A. I believe there were three.

Q. Was Haley handcuffed?

A. No sir.

Q. Who drove the car?

A. I did.

Q. Did Haley set in the back seat?

A. Yes sir.

Q. Anybody else in the front seat with you?

A. I don't remember now.

Q. Now, when you got back to police headquarters, around midnight when you arrested him,—where did you take him?

A. We took him to the detective bureau, on the second floor, above the police station.

Q. Did anyone start to question him?

A. Yes sir.

Q. Who?

A. I believe it was myself and Sgt. Burnowsky.

Q. Was there any one else in the room then?

A. Yes, there was.

Q. Who?

A. I believe it was Detective Young. There were so many going in and out, that I don't just know who was in.
[fol. 225] Q. There were a lot of officers around there all of the time that you were there, weren't there?

A. Yes sir.

Q. Was Wells there, do you remember?

A. I don't believe.

Q. How about Cap. Quilligan?

A. He was called later on.

Q. Later in the night?

A. Yes.

Q. How about the assistant city solicitor, Wilbur Weaver? Was he there?

A. That I can not say.

Q. You don't remember whether he was there or not.

A. No. I don't.

Q. When you started in on this questioning, who asked the questions?

A. We all asked questions.

Q. Everybody who was in the room, then, participated in the questioning, is that right?

A. Partially, yes.

Q. Haley was seated, was he?

A. Yes.

Q. Were the rest of you sitting down or standing up?

A. Sitting down.

Q. How long did you stay in the room and participate in this questioning?

[fol. 226] A. I would say about 15-20 minutes at first.

Q. Then you left?

A. I left.

Q. Did you come back again?

A. I can't say that. You mean to question him?

Q. Yes.

A. No. I didn't.

Q. So fifteen or twenty minutes was the only time that you participated in the questioning of this boy?

A. That's right.

Q. Who did you see hit him during that time?

Object.

A. I did not see anyone hit him.

Q. How was he dressed when you saw him?

A. That I can not say. I did not pay attention to the clothing he was wearing.

Q. Remember how he was dressed in the morning when you took him out to the home again?

A. No, I don't.

Q. Before you started questioning him, did you explain his constitutional rights to him?

A. No.

Q. You did not? Who did?

A. Wait a minute. I don't remember.

Q. In any event, you yourself did not explain them to him, did you?

[fol. 227] A. Not at the time.

Q. And you did not hear anybody else do it either, did you, at that time?

A. I can't say.

Q. While you were there, did he ask to telephone to his mother?

A. Not while I was there.

Q. You did not hear him saying anything about that?

A. No sir.

Q. Were you around police headquarters the next morning, the morning of Saturday, October 20?

A. No, I was not.

Q. Don't know anything, then, about Attorney Contie coming over there Saturday morning and asking to see Haley?

A. I was not there. I don't know anything about that.

Q. You don't know anything about that?

A. No sir.

Q. How long did Haley remain in the city jail?

A. I don't even know that.

Q. Did you see him again around police headquarters or the city jail after the time you took him out to his home that morning?

A. Will you repeat that again, please?

Reporter read the question.

A. No, I did not.

[fol. 228] Q. You did not see him at all after that in the city jail?

A. No.

Q. The next time you saw him was when you went to the county jail on the 22nd, is that it?

A. That's right.

That's all.

Thereupon the State, further to maintain the issues on its behalf, called as a witness one GEORGE CRISS, who being sworn by the court, testified as follows:

Direct examination.

By Mr. Rogers:

Q. You are Officer George Criss?

A. Yes.

Q. Your address?

A. 1400-19th NW, Canton.

Q. Mr. Criss, have you ever seen John Haley before today?

A. I have.

Q. I believe it has been testified that on the morning of October 22 you went out to his home?

A. I did.

Q. When you went to his home, what did you get?

A. We got a light jacket and a baseball cap, green cap.

Q. Handing you what has been marked for identification [fol. 229] as State's Exhibit G, I will ask you if that is the cap you got?

A. It is.

Q. Handing you what has been marked for identification F, did you ever see that before?

A. Yes, I have.

Q. Where did you get these two exhibits?

A. At Haley's home.

Q. At the home of John Haley on Liberty Avenue SE?

A. Yes sir.

Q. When did you first talk to John Harvey Haley?

A. About midnight of the 19th.

Q. Where did you talk to him?

A. At his home.

Q. And you were along with Officer Burnowsky?

A. Sgt. Burnowsky, yes.

Q. Tell us what John Haley said that night in his home.

A. We picked him up there but did not talk to him there. We talked to him later in our office in the detective bureau. That is the first contact I had with him.

Q. You went down and were there when John Haley was arrested, were you?

A. In his home, yes sir.

Q. And later, did you see John Haley in the county jail [fol. 230] or some place else?

A. Yes, I saw him a few days later in the county jail.

Q. After you talked to him, what did you do?

A. We returned to headquarters.

Q. Did you do anything else?

A. We had his clothing I believe.

Q. Did you go to his home and get the clothes with Officer Rinehart?

A. We went in the house for them.

Q. And these are the exhibits here, that you obtained in his home?

A. That's right.

I believe that is all.

Cross-examination.

By Mr. Jones.

Q. What time was it when you went down to Haley's home and arrested him on the night of the 19th?

A. I don't remember. It was I believe in the early morning.

Q. Early morning of the 19th?

A. I think it was.

Q. What do you mean by early morning?

A. No,—it must have been about 12:30.

Q. Shortly after midnight?

A. I believe that's it.

Q. Who went with you?

[fol. 231] A. Sgt. Burnowsky, Detective Young and Officer Rinehart.

Q. Did you go in two cars or one?

A. Two cars.

Q. And when you brought him back, where did you take him?

A. We took him to detective bureau.

Q. Did you participate in questioning him in the detective bureau?

A. I talked to him for a few minutes, yes.

Q. Was that when the questioning first started?

A. Yes.

Q. Who else was there then?

A. Sgt. Burnowsky.

Q. Just the two of you?

A. Yes.

Q. How long did you participate in that questioning there?

A. Approximately 15 minutes.

Q. Did you see Haley again at all that night?

A. Yes.

Q. When?

A. I would say around 7 o'clock in the morning.

Q. Where did you see him then?

A. At headquarters.

Q. What part?

A. Detective Bureau.

Q. Who was there when you saw him at 7 o'clock in the morning, there?

[fol. 232] A. I would say Sgt. Burnowsky and Officer Rinehart.

Q. Was he being questioned at that time?

A. No.

Q. How long were you with him about 8 o'clock in the morning when you saw him that time?

A. I think perhaps half an hour.

Q. Did anything take place during that half hour?

A. We took him to his home.

Q. Then brought him back to headquarters?

A. That's right.

Q. What did you do with him back there?

A. I believe they locked him up. I went upstairs immediately.

Q. Locked him up in a cell in the city jail?

A. I believe.

Q. Is it correct that you did not see Haley at all from the time you questioned him for about 15 minutes when he was first arrested, until 7 o'clock the next morning, approximately?

A. That's right.

Q. During that 15 minutes, when you first were questioning him, did anybody hit him?

A. No sir. They did not.

Q. Nobody?

A. Nobody.

Q. When you started to question him, did you explain his constitutional rights to him?

[fol. 233] A. I did not.

Q. Nobody else did, did they?

A. Not that I know of. There was only Burnowsky in the room with us.

Q. While you were there, did he ask permission to telephone to his mother?

A. He did not.

Q. Were you around police headquarters on Saturday, the 20th, in the morning?

A. I don't remember.

Q. I mean the time right after you took Haley to his home and came back to headquarters. Did you stay around headquarters then?

Mr. Rodgers: That was on the 20th. Not the 22nd.

Court: Will you read the question?

Question read by stenographer.

A. I believe I went to the Elite Rest. and had breakfast.

Q. Do you know anything about Attorney Contie coming over there on the morning of the 20th, and asking to see Haley?

A. I do not.

Q. How long did Haley remain in the city jail, do you know, Officer?

A. I do not.

Q. Did anybody see Haley while he was in the city jail, to your knowledge?

A. I would not know.

That's all.

[fol. 234] Thereupon the State, further to maintain the issues on its behalf, called as a witness J. B. QUILLIGAN, who being duly sworn by the court, testified as follows:

Direct examination.

By Mr. Rogers:

Q. Will you state your name?

A. J. B. Quilligan.

Q. I believe you are captain of police in the Canton City Police Department?

A. That's right.

Q. And were you captain of police on the morning of the 20th of October, 1945?

A. I was not, but I was acting in a captain's capacity at that time.

Q. But you were still captain of police, were you?

A. Yes.

Q. You were acting chief of police at that time?

A. Yes, I was the acting chief at that date.

Q. Do you know the defendant, John Haley?

A. Yes, I met him.

Q. Did you see him in police headquarters that morning?

A. I did.

Q. About what time did you see him, Captain?

A. Well, it was in the early morning, I would say—I am not positive, but perhaps between four and six when I saw him.

Q. Where did you see him?

[fol. 235] A. I saw him back in the detective bureau.

Q. Did you later see him, after that?

A. I saw him when I acknowledged the statement that he had given.

Q. I hand you what has been marked for identification as State's Exhibit D, and offered as such, and ask you if you ever saw that before?

A. Yes, I have.

Q. Where did you see it?

A. In the police department in the detective bureau.

Q. Did you talk to John Haley before you acknowledged that signature?

A. I did.

Q. Did he sign that in your presence?

A. He did.

Q. I believe you are a lawyer, are you?

A. That's true.

Q. Member of the Stark County Bar?

A. Yes sir.

Q. At the time you took that acknowledgment, was there any threat or coercion used on this boy to take this acknowledgment?

Object.

Q. I withdraw that. What was done? Did he sign that voluntarily?

Object.

[fol. 236] Q. Did he sign that in your presence?

A. He did.

Q. You did not coerce or ask him anything about it?

Object.

Court: Let him testify.

Q. What was done in your presence there? He signed it, did he not?

A. Yes, he did, in my presence.

Q. Did you acquaint him with the facts, what he should do about this?

A. Yes, I did. I asked him to stand up, raise his hand, and asked him if the statements or the facts contained in that statement were true and he said Yes. And I asked him to sign it.

That's all.

Cross-examination.

By Mr. Mills:

Q. You were the chief of police, at that time?

A. I was acting chief.

Q. And of course all these men were all under your direction at that time, weren't they?

A. Well, that's true.

Q. When did you first see him? Was it four in the morning, did you say?

A. When I first saw Haley?

Q. Yes.

[fol. 237] A. I saw him earlier in the evening, before midnight sometime.

Q. What time was that?

A. Well, it was before midnight. I don't know the exact time it was.

Q. Where did you see him?

A. I saw him when they brought him into police headquarters.

Q. He was in custody of what officers?

A. That I can not say. I don't remember.

Q. You don't know who brought him in?

A. That's right.

Q. Did you have knowledge of them going out to get him?

A. Not that particular boy, I did not.

Q. Did you know that two cars had gone out with two officers in each car to get this boy?

A. No, I did not know that.

Q. Didn't know that?

A. No.

Q. Well, when they brought him in to the police headquarters, you saw him, did you, Mr. Quilligan?

A. I saw him when they brought him upstairs.

Q. Did you talk to him?

A. No.

Q. Did you hear anybody else talk to him?

A. No.

Q. Did you give the instructions what to do?

A. No. I did not.

[fol. 238] Do you know what they did do?

A. No, I do not.

Q. Did you make any inquiry?

A. No.

Q. Then, you did not see him until about 6 o'clock?

A. No, I did not say six. I think it was between four and six o'clock.

Q. Well, were you at headquarters during all that time, from 4 to 6?

A. No.

Q. Or from the time they brought him in, until 6?

A. No, I was not there all that time.

Q. When did you first come there that morning, to headquarters, Officer?

A. Well, it was past midnight and it may have been past one o'clock a. m. I am not sure.

Q. But at whatever time, did you participate in any questions to this boy?

A. You mean relative to the statement?

Q. Yes.

A. No, I did not.

Q. You mean you don't know what was said nor done before you were called in to acknowledge this statement, is that it?

A. No, I do not.

[fol. 239] Q. Now, it develops here you are an attorney. Upon qualifying you here, it came out you are an attorney licensed to practice at this bar. Now, as, an attorney, of course you knew what his rights were, didn't you?

A. I thought I did, yes sir.

Q. You knew he had a right to remain mute and not answer any questions, without injury to himself. Didn't you know that?

A. Yes.

Q. And you knew it was your duty to tell him that fact, didn't you?

A. No. I did not.

Q. You didn't know that?

A. No.

Q. You knew he was *about* about 15 years of age, did you not?

A. Well, I knew he was under 18.

Q. And you did not give any of your officers under you, any instruction as to what to do or how to treat this boy, did you?

A. No. They know how to do that.

Q. You think they do. But you did not tell them what to do?

A. No.

[fol. 240] Q. You did not tell them and did not tell this boy what his rights were, did you?

A. Mr. Mills; they do all that in every case.

Q. Please answer my question. Did you or did you not, instruct your men to advise this boy what his rights were when he had been arrested?

State objects.

Question read by reporter upon request of Court.

Court: You may answer. Overruled.

Exceptions to defendant.

Court: You said you were there when the boy was brought in. You may answer, since he was there when this was going on.

Mr. Rogers: He did not say he was there when the proceeding was going on.

Overruled.

Defendant excepts.

Question re-read by stenographer upon request of the witness:

Object.

Overruled.

Exception to defendant.

A. No, I did not.

Q. You took the acknowledgment?

A. Yes.

Q. Who was there when you did that, do you remember?

A. No, I don't remember,—but John Haley, myself, two men who were brought in from outside. I don't remember [fol. 241] their names. There may have been some policemen or detectives around. I am not sure.

Q. You did not read this statement before you swore him to it, did you?

Object. He did not have to.

Overruled. State excepts.

A. I don't remember, Mr. Mills, whether I did or not.

Q. It is quite a lengthy statement, isn't it? Look at it.

(Witness looked at paper.)

Q. Do you remember now whether you read that over before you administered the oath?

Object. He does not have to read it.

A. I won't say whether I read it or not, but I am positive that John Haley read it. I watched him while he was looking over it. I asked him to read it.

Q. You asked him to read it?

A. Yes sir.

Q. Who was present and heard that?

A. I don't remember but I think the detectives were there. They may have heard it. I don't know.

Q. You understood he had made this statement, didn't you? You were so advised when you were called in to take the acknowledgment?

A. Yes.

Q. Then why did you lay it down for him to read it again? [fol. 242] A. I always do ask them to read it.

Q. You always do?

A. That's right.

Q. How long did it take him to read it?

A. I didn't time him.

Q. How long was it,—five—ten minutes, 15?

A. I would have to guess at that.

Q. You would not have an idea?

A. Fifteen,—20 minutes,—25.

Q. You sat there waiting 15 or 20 minutes before you acknowledged it, did you? Before you administered the oath to him?

A. Yes sir.

Q. What did you say by way of oath when you administered the oath.

Mr. Rogers: That is on the paper, what he said.

Q. What did you say to him?

Object.

Overruled.

Q. What did you say to him?

A. I asked him to stand, raise his right hand. Told him this was a statement that he could make or he did not have to make it under the constitution. That we may or may not use it in court if it becomes necessary.

Q. You may or may not?

A. Yes. Then I asked him—(interrupted)

Court: Will you read those questions and answers?

[fol. 243] Thereupon the stenographer read the last several questions and answers.

Court: Proceed.

A. I asked if he was made any promises during the questioning and he said No. Then I asked him to sign the statement.

Q. Did you ask whether anybody struck him or not?

Object.

Overruled.

Exception.

A. I don't think I did.

Q. You didn't ask him that. Then you signed this, and that was all you had to do with the matter, was it?

A. No, I asked him to read it and he read it over. Then there were two witnesses brought in the department by an officer. They were present at the time he signed his name to the statement.

Q. Did they hear what you said to him when you swore him?

A. I can not answer that. I don't know for sure.

Q. They were in there, weren't they, you said?

A. I would not say whether they could hear it or not. I don't remember just where they were.

Q. Than that finished it, did it?

A. I left then, I think.

Q. Now, do you know about anybody coming over to see him while he was in jail?

A. No, I do not.

[fol. 244] Q. Did you, or did anybody, instruct, give instructions that he was to be held incommunicado?

A. No, I don't think I did.

Q. Wasn't he so held?

State objects.

Overruled.

A. He was held, but whether he was held incommunicado I am not able to say.

Q. Well, in the language of Mr. Burnowsky, he had put a stopper on him?

Object. There is no such testimony.

Question read by stenographer upon request of court.

Objection sustained.

Q. Did you put a stopper on him? Do you do that over there? That is the custom over there, isn't it?

Object.

Court: Whether it was done at this time. Objection sustained as to the custom there.

Q. Did you put a stopper on him? Was there such an order made by you?

Mr. Rogers: He said no.

A. I said No.

Q. And if such an order was made, you don't know anything about it, did you? You didn't know?

A. That's right.

Q. But you won't say that order was not made, will you?

Object.

A. No. I won't say it was not made.

That's all.

[fol. 245] Redirect examination.

By Mr. Rogers:

Q. That morning that you took the acknowledgment of this boy, of John Haley, did you?

A. Yes.

Q. And when you took it, you asked him all about it?

Deft. Object. He has been all over that.

Court: Anything in addition to what was said before, you may go into.

Q. When you took that acknowledgment, he had read the statement, had he not?

Object.

Court: I think you were over that. Don't repeat.

Q. When you took that statement you told him about the statement he had made——

Object. It is leading.

Q. Did you tell him about the statement he had made——

Object.

Court: I don't know what you mean by that.

Mr. Rogers: The one he acknowledged in writing.

Court: If there is nothing further than he has told, why go into it?

Q. Then you told him about the statement and he read the statement, didn't he?

Object.

Sustained.

Q. Did he read the statement before he signed it?

Object.

Overruled.

Except. That has all been covered.

A. Yes.

[fol. 246] Q. And then he signed it?

A. Yes sir.

Q. In your presence?

A. Yes.

That's all.

Thereupon the State, further to maintain the issues on its behalf, called as a witness one ORRVILLE SHAFER, who being duly sworn according to law, testified as follows:

Direct examination.

By Mr. Rossetti:

Q. Will you state your name?

A. Orrville Shafer.

Q. Your address?

A. 1107 7th Street, NE, Canton, Ohio.

Q. Where are you employed, Mr. Shafer?

A. Ice Service Company.

Q. Were you employed by the Ice Service Company on the morning of October 20th, 1945?

A. I was.

Q. Do you remember being called into the police headquarters that morning?

A. I do.

Q. Where were you at the time you were asked to go up to the police headquarters?

A. I had just left the Elite Restaurant.

[fol. 247] Q. Were you delivering ice at that time?

A. That's right.

Q. Where did you go when you were asked to come up to the police headquarters?

A. I drove the truck around the block and went to the police headquarters.

Q. Which room, do you remember?

A. Second floor, it was.

Q. Do you remember the officer that came down and asked you to come up?

A. No, I didn't know his name.

Q. Do you remember what you were asked to do, at that time?

A. Yes sir.

Q. What did you do?

A. I signed the confession that I believe Parks had made.

Q. Was it Parks?

A. Parks' name was in there.

Q. Do you know this defendant, John Harvey Haley?

A. From seeing him up there that morning.

Q. Did you see him there that morning?

A. Yes sir.

Q. Now, showing you what has been marked for identification as State's Exhibit D, particularly the last page, will you take a look at the signatures on that page?

A. Yes.

[fol. 248] Q. Do you see the name of Orrville Shaffer on this exhibit?

A. I do.

Q. Whose signature is that?

A. Mine.

Q. Did you write your name there on this line, on October 20, 1945?

A. I did.

Q. Do you see any other signature on this last page?

A. Yes, Burns.

Q. Do you know him?

A. No. I knew he was a cab driver.

Q. Do you recognize any other signature on that paper?

A. Haley's.

Q. Now, do you remember—strike that, please. Whom did you see write this name, John H. Haley?

A. That fellow over there. (Indicating defendant Haley).

Q. Were you present when he signed his name to this statement?

A. I was.

Q. Which fellow do you mean?

A. The colored boy sitting there at that table. (Indicating the defendant.)

Q. Were you present when this other man was there, Cap. Quilligan?

A. I don't know Quilligan.

[fol. 249] Q. Do you remember who was there when you were in this room?

A. This cab driver and myself and Burnowsky *was* there.

Q. Do you know Captain Quilligan?

A. No. I don't.

Q. Is that the gentleman you saw that morning sign this statement?

Mr. Mills: You have asked him that before.

Q. I don't insist on it. Do you recall—strike that. Did you notice the clothes which Haley had on that morning?

A. Not particularly, no.

Q. Did you notice the condition of his clothes?

A. They were in pretty good shape.

Q. Did you notice any torn clothing?

A. No sir.

Mr. Mills: That's leading.

Court: That's pretty leading.

Q. Will you explain to the jury what you mean by being in pretty good shape?

A. Well, they were not torn or ragged.

Q. Did you notice his trousers?

A. Not particularly. He was sitting down when I was in there.

Q. Did you notice the condition of Haley's face that morning?

[fol. 250] A. There was nothing wrong with his face. He was eating peanuts.

Cross-examination.

By Mr. Jones:

Q. How was Haley dressed that morning. What did he have on?

A. I don't remember just what he had on.

Q. You don't know whether he had a coat on, or a jacket or what, do you?

A. No.

Q. Who told you where to sign this paper you have identified here?

A. Burnowsky, I believe.

Q. What did he say to you?

A. There were three papers I signed.

Q. What did Burnowsky tell you to do when he got you up there?

Object.

Question read upon request of court.

Objection overruled.

O. He asked me to sign as a witness to the confession.

Q. He showed you where to sign?

A. Yes sir.

Q. And there was nobody else in the room? Any other policemen in the room, excepting Burnowsky?

A. Well, there was—I don't just remember.

Q. You are not sure whether there was anybody else in there or not?

[fol. 251] A. There were two or three people in and out. Whether they were right there when I—when he told me, I don't know.

Q. How long were you in that room up there?

A. Perhaps 10 minutes.

Q. During that time people kept coming in and going out, did they?

A. From the hallway.

Q. And there were police officers there, were there not?

A. I imagine.

Q. Were they in uniform?

A. No sir.

Q. All in ordinary civilian clothes?

A. Yes sir.

Q. Did Haley sign this paper, marked Exhibit D, while you were there?

A. Yes sir.

Q. Did Burnowsky tell him where to sign?

A. I believe.

Q. What?

A. I believe so.

Q. Did anybody else say anything to him?

A. I don't recall.

Q. Did he sign it first, or did you sign it first?

A. He signed it first.

Q. Who did?

[fol. 252] Q. Haley did.

Q. Then you signed?

A. Yes sir.

Q. Was this Arthur A. Burns there at the time?

A. Yes sir.

Q. Did you sign it before he did?

A. I did not. There were 3 papers we signed while I was signing—I just don't remember exactly which or when we signed.

Q. You don't remember which one of you signed this paper first?

A. No sir.

That's all.

Thereupon the State, further to maintain the issues on its behalf, called as a witness OFFICER VIRGIL L. PFISTERER, who being duly sworn according to law, testified as follows:

Direct examination.

By Mr. Rogers:

Q. You are Virgil L. Pfisterer?

A. Yes sir.

Q. Your address?

A. 710 Fulton Road, NW. Canton.

Q. You are an officer in the Canton police department?

A. I am.

Q. And were on October 14th, 1945?

A. I was.

[fol. 253] Q. And in your capacity as a member of the police department, did you investigate the slaying of Mr. William Karam?

A. I knew of the slaying. I was not on the actual investigation of it.

Q. Let me ask you. On the morning of the 20th of October, in connection with your duties, what did you do in connection with the killing of William Karam?

A. October 20th? I don't remember anything in particular I did that date.

Q. Well, in connection with your duties on this case, did you go to Mercy Hospital?

A. No sir.,

Q. And later, did you have turned over to you some evidence in this case?

A. Yes sir.

Q. Handing you what is marked for identification in this case as State's Exhibit C, I will ask you if you ever saw that before?

A. Yes sir.

Q. Where did you see it?

A. I saw this when it was given to me as evidence, by Sgt. Burnowsky.

Q. I now hand you what has been marked for identification in this case as State's Exhibit B and ask you if you ever saw that before?

[fol. 254] A. Yes, I have seen that shell.

Q. Who gave you that?

A. That was given to me by Detective Young.

Q. I hand you herewith what has not yet been marked for identification, and ask you to look at that? (Handing the witness a gun).

A. Yes sir, I have seen this gun before.

Q. And from whom did you get that?

A. I got that gun from Officer Scrimo.

Q. When you got that gun from Officer Scrimo, together with these other exhibits I have shown you here, what did you do with these, this gun, and these exhibits C and D? (Should be B and C).

A. I packaged them and sent them to the Federal Bureau of Investigation, FBI, for analysis and comparison.

Q. When you mailed this to the FBI, I will ask—you ever saw that before?

A. That is the mailing tag that I made out, and I notice it shows the postoffice registry.

Q. In that package, what did you put?

A. I had the gun wrapped in there, and the shell, the projectile and the eartridge case.

Q. And you mailed that to Washington?

A. Yes sir.

Q. After you had sent away these three exhibits, the bullet, cartridge and the gun, did you receive them again?

[fol. 255] A. Yes, I received them again when they were sent back from the FBI.

Q. To whom did you turn those three exhibits over?

A. I turned them all over to the office of the county prosecutor.

A. I believe that's all.

No cross-examination.

Thereupon the State, further to maintain the issues on its behalf, called as a witness one ROBERT M. ZIMMERS, who being duly sworn by the court, testified as follows:

Direct examination.

By Mr. Rogers:

Q. Will you state your name?

A. Robert M. Zimmers.

Q. Your address?

A. 3001 Nelson Place, SE., Washington, D. C.

Q. Where are you employed?

A. I am employed as a special agent of the FBI in Washington, D. C.

Q. How long have you been employed there in that capacity?

A. I have been there approximately 4 years.

Q. What are your duties in connection with the FBI?

A. I am employed there as a fire arms examiner in the laboratory.

Q. You mean as ballistic expert?

[fol. 256] A. It is erroneously referred to as ballistic expert.

Q. What are your educational qualifications?

A. I attended Ohio State University in Columbus, Ohio, for one year. And then, attended University of Cincinnati where I graduated with Bachelor of Science Degree.

Q. In your capacity have you had any experience with examination of guns and ballistics?

A. Before my entrance into the FBI, I did not,—into the laboratory there. Since that time I have worked on many cases involving examination of firearms.

Q. What do you say, Mr. Zimmer, as to the number of cases you have worked at with reference to firearms?

A. I have worked on several hundreds of cases, involving thousands of specimens.

Q. In such capacity, I will ask you whether or not you ever saw this, Mr. Zimmer, showing you what is marked State's Exhibit B, the shell jacket.

A. Yes, I did.

Q. That is identified as State's Exhibit B. And I will ask you if you have ever seen this exhibit marked for identification as Exhibit C.

A. Yes, I have.

Q. I will ask you whether or not you ever saw this gun, marked Exhibit H?

A. Yes sir, I did.

[fol. 257] Q. How did you receive these three exhibits, Mr. Zimmer?

A. I received those three exhibits by registered mail from the Canton police department, on October 29, 1945.

Q. After you received them what, if anything, did you do with them?

A. I examined them to see if they could have been fired from that automatic pistol.

Q. And did you conduct such a test with this gun?

A. Yes sir, I did.

Q. After you made the test, what if anything, did you do?

A. I then sent them back to the Canton, Ohio, police department by registered mail.

A. Before sending them back, did you do anything further with these bullets?

A. They were photographed by me after we made the examination and during the course of the examination.

Q. You mean you photographed the bullet referred to as Exhibit B?

A. Yes sir.

Q. And then you photographed the bullet you fired from the gun?

A. I fired a bullet from that gun and made an examination to determine if that was fired from his automatic pistol, and then made a photograph of that comparison.

[fol. 258] Q. Do you have here a copy of the photograph?

A. I have.

Q. Handing you what has been marked for identification as State's Exhibit I, I ask you what that is?

Mr. Mills: We would like to see it.

Q. And I ask you if you ever saw that before?

A. That is an enlargement of the photograph which I took in the course of the examination.

Q. I understand that. This is the photograph you took, both of the bullet you received as Plaintiff's Exhibit B, and the one you fired from the gun, of your own?

A. That is a photograph of the microscopic markings on the bullet which I used in the course of the examination.

Q. That the bullet fired from the gun?

A. The bullet I fired from the gun and the bullet which I received.

Q. Then you placed the two side of each other and took this picture?

A. That's right.

Mr. Rogers: We offer it in evidence, Your Honor.

Court: I will hold it until we get further along. Did you ultimately reach a conclusion about this gun?

A. Yes sir.

[fol. 259] Mr. Rogers: I will ask him that. I am offering it now.

Court: The Court will hold his decision.

Q. Mr. Zimmer, as a result of tests you made with this gun, this bullet and this cartridge, what is your conclusion with reference to that test?

Object.

Q. What conclusion did you reach from these two exhibits, this test?

Court: Whether or not he has an opinion, after that examination.

Q. What is your opinion or conclusion as to whether or not this bullet and this cartridge were fired from that gun?

Object.

Court: What is your opinion?

Mr. Mills: They are not yet in evidence.

Mr. Rogers: We offer B, C and H in evidence.

Court: Exhibits B, and C are admitted.

Mr. Rogers: We offer the gun also, Exhibit H.

Court: The court knows nothing where that came from. The court will wait for something on this gun. The other two are admitted. There is no use to go into this question at this time as to whether it came out of that gun.

Mr. Rogers: I think it is, Your Honor. I would like to argue this in the absence of the jury.

[fol. 260] Thereupon the court repeated his admonitions to the jury, and a brief recess was had.

After recess, jury back in box.

Mr. Zimmer again in witness box.

Mr. Rogers:

Q. I would like to have the last question read.
Stenographer reading:

Q. What is your opinion?

We offer B, C & H in evidence:

Object.

Q. You did say this gun, Exhibit H, was received from the Canton police department?

A. That's right.

Q. When you received the gun, did you receive the bullet and cartridge?

A. Yes, I received them at the same time, B and C also.

Q. After receiving them, did you conduct a test?

A. Yes sir.

Q. And after you conducted that test, did you reach any conclusion in the matter?

A. Yes sir.

Q. What is your conclusion, Mr. Zimmer, with reference to the bullet—

Object.

Q. —with reference to this gun you received from the Canton police department?

[fol. 261] Court: With reference to your opinion with reference to this gun, the bullets—

Object.

Q. We want to see whether or not this bullet came out of that gun.

Object.

Overruled.

Deft. excepts.

Court: Do you have an opinion, did you have one after you made the test?

A. Yes sir, I have an opinion on it.

Q. What is your opinion whether this bullet came out of this gun?

Object.
Overruled.
Deft. excepts.

A. I identified that bullet—

Court: No. What is your opinion as to whether it did.
What is your opinion?

A. My opinion is that that bullet and that cartridge case were fired from that weapon, that weapon that has been introduced in evidence in this court.

Q. Now, State's Exhibit I, you took this picture, did you?

A. Yes.

Q. Was that taken after you received both the expelled cartridge and the gun and shell?

A. Yes, that is photograph of the tests I made in the laboratory in Washington.

[fol. 262] Mr. Rogers: We offer it in evidence, Your Honor.

Court: Court will hold both H and I until after cross-examination.

Mr. Rogers: We offer four of these exhibits in evidence.

Court: The bullet and cartridge are now in, and the court will hold I and H until after cross-examination, as he said.

Cross-examination.

By Mr. Mills:

Q. Now, you say you had some experience in handling these cases, like this?

A. Yes sir.

Q. Did you say you had been doing that for four years?

A. Four years.

Q. Now, there is a difference between guns and bullets, and so on?

A. Yes sir.

Q. Owing to the different makes?

A. That's right, sir.

Q. Now, this is an ordinary colt 32 pistol, isn't it,—automatic?

A. It is, a colt 32 automatic pistol.

Q. A colt 32 automatic pistol, yes. There is not any difference in the average colt automatic, is there?

A. It is no different than another 32 colt automatic.
[fol. 263] Q. Then, how can you say that bullet came out of this gun?

A. The general rifling characteristics of all 32 colt automatic pistols are the same. But the identification of a bullet as having been fired from a particular weapon is based upon the microscopic markings which are left on the bullet fired from a gun, so you can identify any particular gun as having fired a particular bullet, as distinguished from any other gun, even though it is the same type.

Q. You mean to tell me you can take twenty guns like this one, made by the same company at the same time, in which the rifling was similar, and fire 20 bullets, and you can pick out the bullet that came out of each individual gun?

A. That question—(interrupted)

Q. You mean to tell me you are able to do that?

A. There are certain things which enter into this.

Q. Are you able to do that?

A. Your Honor, if you please, I believe I can answer the question with an explanation. I am entitled to that.

Q. You answer the question, and then you can explain.

A. I can.

[fol. 264] Q. How can you do that?

A. I can do it as simply as any other examiner can, taking into consideration certain things involved in firing firearms.

Q. Is there anything unusual about that bullet?

A. It is a 32 colt automatic type bullet.

Q. Can you see any riflings on it?

A. Microscopically, yes. The rifling is very visible.

Q. Where is it on this bullet?

A. Here on this bullet are the marks which you see referred to as grooves. That classifies it into a particular type. The identification is based upon microscopic markings within this gun.

Q. They are all the same?

A. They are not all the same.

Q. The rifling is all the same?

A. The general rifling characteristics are the same in all Colt's.

Q. All made by the same tools at the same time, all guns made at that same time with the same tools, would have the same markings inside?

A. Any colt weapon will have the same general type of rifling characteristics.

Q. You fired another bullet out of this gun, did you?

A. I fired three from that gun.

Q. Did you bring the other 3 with you?

A. Yes sir.

[fol. 265] Q. Where is it?

A. I have it in my pocket.

Q. Let me see it, please.

(Witness handed something to Mr. Mills.)

Q. Are these cartridges all made by the same company?

A. I don't remember whether they are, sir?

Q. Will you look and see?

A. Yes sir.

Q. My eyes are not as good as—not good enough to see that.

A. No sir. There is one Winchester and one Remington and a White.

Q. What difference, if any, would that make?

A. There are slight variations—in different ammunition.

Q. All the same grain bullets?

A. Yes sir.

Q. Weigh exactly the same?

A. Yes sir.

Q. Now, this was the cartridge—that is the White, is it?

A. That cartridge case is a White, yes sir.

Q. That the one you received, is it?

A. Yes sir.

Q. I will keep it separate, if I can. The cartridges are all the same size, aren't they?

A. Yes.

[fol. 266] Q. Have they the same kind of ammunition in them?

A. The same pow-er?

Q. Yes.

A. No sir, they have some variation.

Q. That would make some difference, wouldn't it?

A. Not necessarily.

Q. Not necessarily. But it did, didn't it?

A. Not necessarily. That's very unlikely.

Q. It does sometimes, does it?

A. If black powder is used, yes, but black powder has not been used for a long time.

Q. What did you fire this bullet in?

A. Rag waste.

Q. And of course that is different than this one, isn't it? What difference did you see about these bullets? This is the one you got from Canton. What difference is there between these two bullets?

A. With respect to what?

Q. Anything. Do you see any distinction between them?

A. The only distinction is the nose of this one is a little scored and this is not.

Q. That is perfect, isn't it?

A. Yes sir.

Q. Except what rifling there may be on it?

[fol. 267] A. That's right.

Q. It had not struck anything? To score it?

A. No sir.

Q. But that one has.

A. I don't know of my own knowledge. It has been alleged it has.

Q. Now, what do you have, what do you take into consideration to come to your conclusion that these bullets you have here, and especially the one you got from Canton, that one here, came out of that particular gun?

A. I merely examined the microscopic markings of each, and found that to be fired from the same weapon.

Q. That's your opinion, is it?

A. That's my opinion, yes sir.

Q. You did not use a different gun or guns on any of these. You used the same gun, didn't you?

A. Yes.

Q. Why didn't you take another gun instead of this gun and fire something from it? You have other guns like this?

Object.

Question read upon request

Overruled.

State excepts.

[fol. 268] A. Because it would have been of no useful purpose.

Q. Why wouldn't it serve some, to determine whether you could distinguish between the two guns?

A. Based upon the number of examinations I have made, in years of experience, it would have been of no useful purpose.

Q. Nobody submitted any bullets to you out of different guns and asked you to put the bullet to the proper gun. You have not done that, have you?

A. Yes sir.

Q. You did not do that in this case?

A. I had one gun submitted to me and there was no use in checking another. We have found from experience that no two weapons will leave the same microscopic markings on the same bullet. It is infallible. Every weapon leaves its own telltale fingerprints on the bullet which is fired through it. No other bullet will have the same thing, the same pattern.

Q. You mean to say you could not be mistaken by examining that bullet, the fact it did not come out of this particular gun? Do you mean to say that?

A. In the same sense that nothing is impossible,—my opinion,—and my experience has taught me, there is no other gun that will leave the same microscopic markings on a bullet as that particular weapon.

[fol. 269] Q. Are these all the tests you made of this, the ones you have the cartridges here?

A. Yes sir.

Q. Is there any distinction at all between those three bullets?

A. There is no distinction whatever, no sir, with respect to their general appearance.

Q. Is there any difference between those three and this one?

A. There is a difference.

Q. This one you got from Canton?

A. In general appearance, yes sir. There may be some microscopic mark which appear on this but did not appear on that.

Q. And yet be fired out of the same gun?

A. That's right, sir.

Q. Then how can you tell?

A. Because you can usually explain the difference in the markings of the two. One having passed through a human body, if it strikes bones they will leave marks which will not appear on a bullet which did not pass through a body.

Q. You don't know what this one passed through?

A. No. Not definitely.

Q. But these are microscopis markings on these bullets—

[fol. 270] A: The general microscopic markings upon which my examinations were based, were the same for all these bullets.

Q. The general microscopic—

A. The microscopic markings, I put it that way.

Q. Is there no difference between these four bullets you have here?

A. I can identify,—I did identify all four of these after having been fired from that weapon, as having been fired from that gun.

Q. Were there differences in the microscopic markings?

A. Some on some that are not on the other. But based upon my comparison, I identified them all from that weapon.

Q. You say you fired all three from that gun and they are different in microscopis markings?

A. I did not say that. I said there are some microscopic markings which appear on these three which do not appear on that one. And likewise, there are markings which appear on the three and not on the other one. But there are several microscopic markings present that identify them all as having been fired from that weapon.

Q. That's your opinion?

A. That is my opinion.

[fol. 271] Q. Now these four you gave me you fired out of that gun.

A. Yes sir.

Q. And they all have different microscopic markings on them, do they?

A. They have some which are not on the others.

Q. We offer these in evidence.

Defendants Exhibits No. 3.

Court: The court will hold all these until the examination is finished.

Re-direct examination.

By Mr. Rogers:

Q. Mr. Mills has shown you the cartridge and bullet offered by the State, which you have said that in your conclusion, both the cartridge was fired by this gun and the bullet came out of that one.

A. That's right.

Q. He has also shown you some other cartridges and bullets, is that right, which you have identified?

A. There are four which I fired from that weapon.

Q. The four you fired, what do you say now as to your conclusion as to whether or not all of those cartridges came out of this gun.

A. They did.

[fol. 272] Q. Let me ask further. Did you identify a bullet by the rifling, or by its microscopic examination?

A. By the microscopic markings within the rifling.

Q. So the rifling may be the same, but the microscopic marks may show where it came out of the gun?

A. The microscopic markings are different for each weapon.

Q. And you took this photograph, did you?

A. Yes sir.

We offer it in evidence.

Q. And this photograph was taken of the bullets you fired, and the bullets you received from the Canton police department?

A. They were taken from the microscopic markings of the bullets I fired and the one from the police department.

Q. And having taken those photographs, does that show both the rifling and the microscopic markings on this bullet?

A. It shows a portion of each, yes sir.

We offer the Photograph in evidence, Your Honor.

Court: If the court understands the matter now, it is this: The state has offered one exhibit which has not been admitted, the gun. The defendant has offered four bullets, defendant's exhibit, not yet received. The court now rules on this. About 15 years ago I remember when this question [fol. 273] was new. The supreme court has never passed on this question or one close to it, but about 15 years ago the court of appeals of Hocking County passed on it, opinion being written by a judge as able as any who sat on any court at the time. He wrote an able opinion in 35 Court of Appeals, almost the precise question we have here. That has been referred to by other courts of appeals. On authority of the holding of the court of appeals of Hocking County, this court admits the revolver, holding it competent evidence; also admits the four bullets as explanatory of

this; and also admits this photograph. All are admitted in connection with and explanatory of this particular witness's testimony.

Exceptions to both sides to this admission.

Mr. Rogers:

Q. Since these are admitted, I will ask you, on this bullet, what Q means?

A. That is a marking on it submitted to me for examination. And the K is my marking, for the ones I supplied.

Q. The Q is the one sent to you and the K is the one you made yourself? The bullet you provided?

A. That's right.

Q. I would like to show these to the jury.

Thereupon the exhibits were passed about among the jurors, state's Exhibits.

Court: I believe that is all, Mr. Zinn.

[fols. 274-275] Mr. Rogers: I believe the State rests; Your Honor.

DEFENDANT'S MOTION FOR DIRECTED VERDICT

Mr. Jones: Now comes defendant and moves the court to direct a verdict in favor of the defendant in this case, for the following reasons:

1. The State has failed to prove the essential elements, essential allegations of the indictment.
2. The State has failed to prove the corpus delicti.
3. The State has failed to prove any criminal agency.
4. The State has failed to prove any intentional killing.
5. The State has failed to prove any unlawful killing.
6. The State has failed to prove by any competent evidence any criminal act on the part of the defendant.

Mr. Jones; We should like to be heard on this, Your Honor.

[fol. 276] 9 A. M. Tuesday, April 2, 1946

Court: Defendant's motion is overruled. Exception to Defendant.

Defendant's Case in Chief

Thereupon the defendant, to meet the evidence produced by the plaintiff, State, and to maintain the issues on his behalf, called the following witnesses and offered the following, to wit:

MRS. SUSAN HALEY, called on behalf of the defendant and being duly sworn by the court, testified as follows:

Direct examination:

By Mr. Jones:

Q. Will you state your name, please?

A. Mrs. Susan M. Haley.

Q. Your address?

A. 1131 Liberty Avenue, SE, Canton.

Q. You are the mother of John Haley, the defendant in this case?

A. Yes, I am.

Q. Were you at home on the night of October 19, 1945?

A. Yes, I was.

Q. Do you remember when the police came down there?

[fol. 277] A. Yes, I do.

Q. Did you see your son, John Haley, at that time?

A. Yes, in the house, I did.

Q. In the house. Did you see him when he left the house with the policeman?

A. Yes, I did.

Q. How was he dressed then?

A. He had on a light coat, and brown pants and a blue checked shirt.

Q. What kind of a shirt?

A. Light blue checkered shirt.

Q. With reference to that shirt, what condition was it in at that time?

A. It was nice and clean.

Q. Was it torn?

A. No sir. It weren't.

Q. How about the pants?

A. They were nice and clean. They was not torn either.

Q. When did you see that shirt and those pants again?

A. That Sunday when I went up to take him some clean clothes.

Q. Where did you go on that Sunday?

A. I went up to the police headquarters here.

Q. Did you see those pants and that shirt then?

A. They gave them to me, and they took him the clean clothes I had. They gave them to me to take home.

[fol. 278] Q. I will hand you, Mrs. Haley, what has been marked for identification as defendant's Exhibit 1, and ask you to examine that and tell us what it is.

A. That is the shirt he were wearing the night they took him.

Q. Now, Mrs. Haley, is that shirt now in the same condition as it was when you got it on that Sunday at the police headquarters?

A. Yes, it is.

Q. I call your attention, Mrs. Haley, to a torn place near the collar of the shirt.

A. It were like that when I got it.

Q. Was it like that when your boy left the house on the 19th?

A. No, it wasn't. There weren't a torn place in it.

Q. And these spots on the back of the collar and on the back of the shoulder, were those there when your boy left the house that night?

A. No sir, they wasn't.

We offer Defts. Exhibit 1 in evidence, Your Honor.

Court: They are admitted.

Q. Now I hand you, Mrs. Haley, what has been marked for identification as Defendant's Exhibit 2, and ask you to examine those and tell us what that is?

[fol. 279] A. Those are the pants he were wearing the night they took him, but they weren't torn any place. They just got out from the cleaners that day.

Q. Are they now the same as they were when you got them back at police headquarters on that Sunday?

A. Yes, they are, yes sir.

Q. I call your attention to a rap down in the back of the pants. Was that there when your boy left the house?

A. No sir, it wasn't.

We offer Defts. Exhibit A, your honor.

Court: It is received, admitted.

Q. After John was taken away by the police, when did you next see him?

A. Not until Thursday the next week, because they would not let me see him.

Q. Where was he when you saw him?

A. In the county jail.

Q. Between the time he was taken away by the police and the Thursday of the next week when you saw him in the county jail, did you make any attempt to see him?

A. Yes, I did.

Q. What did you do?

A. I went out there. They said I could not see him until visiting day.

[fol. 280] Q. You went to the county jail?

A. Yes.

Q. Did you go up to police headquarters?

A. Yes, I went up there several times.

Q. When did you go to the city jail?

A. The first time was that Saturday morning, the day after he was arrested.

Q. What happened when you went up to police headquarters on Saturday morning?

A. They told me to come back at 10 o'clock and I could talk to the sergeant. I didn't see him.

Q. Did you go back?

A. I went back and they said the sergeant was not in. And so I could not see John.

Q. Did you go back again at all after that?

A. I went back on Monday morning.

Q. What happened then?

A. They said I still could not see him.

Q. Did you go back after that?

A. No. After that I went over to see Mr. Contie, and hired him to see him, but they didn't let him see him.

Q. Did you go with Mr. Contie?

A. No. He told me to stay outside. I went over to police headquarters but I stayed outside.

Q. Did he see your boy?

A. No sir. He didn't.

[fol. 281] Q. What day was that?

A. Monday.

Q. Was that the Monday after his arrest?

A. Yes sir.

Q. When you saw John in the county jail on Thursday, just tell the jury what his physical condition was.

Q. His neck was swollen and sore, his face was swelled, and his arm was skinned when I saw him.

Q. Was his neck swelled and his face, and his arm skinned at the time they arrested him?

A. No. They wasn't.

Cross-examination.

By Mr. Rogers:

Q. You are the mother of John Haley?

A. Yes, I am.

Q. You have testified that they came and got your boy on the night of October 19?

A. They did.

Q. And took him to jail?

A. Yes.

Q. Around midnight?

A. Yes sir. Between 11 and 12.

Q. That was on Friday night?

A. Yes sir.

Q. And you say you went up and got these clothes at the jail?

[fol. 282] A. I went up on Sunday and got them.

Q. How did you get them if they did not let you see him?

A. I went around asked and they took them clean clothes and brought these back to me.

Q. You brought clean clothes up for him?

A. Yes sir.

Q. And these clothes were in this condition on Sunday, October 21st, torn and bloody, were they?

A. Yes, they were.

Q. Now, on the morning of October 20, Saturday morning, shortly before 6 o'clock, Mr. Burnowsky and other officers brought this boy of yours down to your home.

A. No sir.

Q. You say that is not true?

A. No. They did not bring him back.

Q. Brought him back at 6 o'clock Saturday morning?

A. No.

Q. And he showed them where the gun had been taken out of that trunk?

A. No.

Q. And you and Mr. Mack were there?

A. No, they came on Monday afternoon.

Q. Oh yes, so when he came back he had on these clean clothes that you had brought him, did he?

A. Yes, he did.

[fol. 283] Q. Then you went out to the county jail?

A. Yes.

Q. On Tuesday and they did not let you in?

A. No.

Q. Visiting day is Thursday.

A. Yes.

Q. You know as a matter of fact, when your boy was taken into custody, he was wearing a white shirt?

A. He did not have on no white shirt.

Q. And you saw his picture in the Canton Repository?

A. Yes, I did,

Q. Did you see anything in that picture showing that his shirt had been torn?

A. It was torn when I got it. I don't know how it was when the picture were taken.

Q. You mean—well, That's all, I believe.

Thereupon the defendant, JOHN H. HALEY, further to maintain the issues on his behalf, took the stand, and being duly sworn by the court, testified as follows:

Direct examination.

By Mr. Mills:

Q. You are John Harvey Haley?

A. Yes.

Q. Defendant in this case. What is your address?

A. 1131 Liberty Avenue, SE., Canton, Ohio.

Q. How old are you, John?

[fol. 284] A. Fifteen.

Q. And when were you 15?

A. The second day of August.

Q. Do you go to school?

A. Yes sir.

Q. Where do you go to school?

A. McKinley High School.

Q. What grade?

A. 12th Grade.

Q. Is that a senior?

A. Yes, Senior.

Q. You would graduate when?

A. In June.

Q. This coming June?

A. Yes.

Q. You are still in school?

A. Yes.

Q. Now, do you remember the 14th of October, last fall?

A. Yes sir.

Q. Where had you been that day, John?

A. At first I went home. Then I left and went to The Cone Shop.

Q. What time did you leave your home that evening?

A. About 6:30 or 7.

Q. When you left, where—first, were you alone?

[fol. 284a] A. Yes.

Q. When you went to the Cone Shop did you meet anybody there?

A. Not at first.

Q. How long were you there before you met anybody?

A. I don't know. I was there just for a while. I don't know how long.

Q. Who did you meet there?

A. Willie Lowder and Al Parks.

Q. Now, when you met these two boys you have mentioned, what did you do or where did you go? Did you stay there, or what did you do?

A. We stayed there a while.

Q. How long did you stay there, do you think?

A. We played the juke box—and I don't know how long we stayed.

Q. You don't know, I presume, when you left there, do you?

A. I don't know what time it was, no.

Q. Where did you go when you left?

A. I went back home.

Q. Who went with you, if you know?

A. Willie Lowder and Al Parks.

Q. Both of them went with you?

A. Yes.

Q. Then, when you went to your home, what did you do, and what had you talked about, if anything?

[fol. 284b] A. Well, while we are in the Cone Shop, we were talking about Western movies, and—

Q. Was there anything said by any of you about a pistol?

A. We were talking about how they shoot each other in the movies. I told them that I knew where a 32 gun was. And they said "Let's see it". So I took them home.

Q. What did you say about the 32? Tell us what kind of a gun it was.

A. I don't know exactly what kind of a gun it was.

Q. Had you ever shot it?

A. Once on New Years.

Q. Who left you do that?

A. Our landlord.

Q. Where you live?

A. Yes sir.

Q. When you came with the boys, did you get that gun at your home?

A. Yes.

Q. And showed it to them?

A. Yes sir.

Q. And who had it at that time?

A. I don't know which one had it. I know they were both looking at it.

Q. Did you have the gun after you got it and gave it to one of the boys? Did you have it after that at all?

[fol. 285] A. No sir.

Q. Did you have it in your hands or in your pocket any time after that?

A. No.

Q. Now then, are you able to tell the jury about what time it was then?

A. It was just about—around about 8 or 8:30, something like that.

Q. Then where did you go after that?

A. We went back down to the Cone Shop and started playing the juke box again.

Q. Do you know how long you stayed there?

A. For a little while. I would say about half an hour or so.

Q. Then, where did you go?

A. We came out and started walking. That's all.

Q. Can you tell this jury about where you went on that walk, where you were walking?

A. We started walking down Cherry Street. We walked down Cherry Street to I believe 9th Street, and turned up 9th Street north, and went down 9th Street to Mahoning

Road. Came down Mahoning Road I think it was 4th or 5th Street we turned west, and walked to Walnut, and walked down Walnut, and I don't know what street it was, [fol. 286] but we turned up one of those streets. We walked straight down to McKinley and down McKinley to Navarre, and I was, I decided to go home. I was tired.

Q. Did you have any place you were going in particular?

A. No, it was a nice night and not too hot and not too cold.

Q. Was there anybody with you excepting these two other boys?

A. That's all.

Q. Had you been in any place of business, any stores, while you were walking around?

A. Not after we left the Cone Shop.

Q. Now, when you went down McKinley Avenue, then where did you go, in what direction? Was there anything said as to where you were going?

A. We were not going anywhere in particular. It was getting late and I decided to go home. I was going down Navarre and could keep right straight on to go home.

Q. Did you pass this place on South Market at the corner of Navarre?

A. Yes, we did.

Q. Were you on your way home at that time?

A. Yes.

Q. When you got there, tell the jury what happened?

A. One boy said they were going in.

[fol. 287] Q. What did you say?

A. I said, No, I am not going in, it is getting late, and I would better go on home.

Q. Then what?

A. They said "You wait for us and we will go in."

Q. Did you wait there for them?

A. Yes, I was standing up on the corner.

Q. How long did you stand there, waiting?

A. I don't think it was over 2 minutes.

Q. Tell the jury what happened then.

A. I heard a shot and somebody hollered, and I was standing there and thinking, and it scared me, and so I ran.

Q. You did say where you were standing. Could you see that place of business?

A. No, I was standing with my back toward the door.

Q. Did you see what took place in there?

A. No.

Q. Do you know who all was in there, if anybody?

A. I don't know who, except these two boys.

Q. Did you see anybody else in there except the two boys?

A. I didn't see very much.

Q. Did you see anybody else in there?

A. No, I don't think I did.

Q. Then, where did you go, John, after that? Which direction, and what did you do?

[fol. 288] A. I went east on Navarre.

Q. What did the other boys do?

A. I don't know what they did. I expect they ran too, because when I ran down the alley and turned right they were coming up the other alley.

Q. Did you see this Mr. Karam at any time?

A. I don't remember seeing him. I wasn't paying any attention.

Q. Did you know him?

A. No, I didn't know him.

Q. After you met the other boys later on, then what did you do, John?

A. We continued running straight down the alley until we came to the Park.

Q. Yes.

A. We got to that Biscuit Company.

Q. Then where did you go?

A. I went straight home, my home was right across the street.

Q. Did you see that gun again?

A. No.

Q. Did you ask the boys what happened there?

A. Yes, I asked them what had happened, and they said to just forget about it.

Q. They didn't tell you what had happened in there?

A. No.

[fol. 289] Q. Didn't show you the gun?

A. No.

Q. You did not see it any more?

A. No.

Q. Then what did you do, John, from that time on?

A. I went straight home.

Q. And that was what night?

A. That was Sunday night.

Q. Did you go to school the next morning?

A. Yes.

Q. Now, do you remember when the police came to get you?

A. Yes.

Q. When was that?

A. Friday night, between 11 and 12 o'clock—close around midnight.

Q. Where had you been that night?

A. To the football game.

Q. Where was that?

A. At Fawcett Stadium.

Q. Do you know what time it was when you get back from that game?

A. Close around about 11 o'clock.

Q. Who was it that came to the house, what officers, do you know?

A. Burnowsky was one of them.

Q. Who?

[fol. 290] A. Burnowsky. And Rinehart. That's all I remember.

Q. Did you know them at that time?

A. No, I didn't know them then.

Q. You have learned who they and what their names are since then.

A. Yes sir.

Q. How many of them were there?

A. I don't know exactly how many. There were two carloads of them.

Q. What did they do? Tell the jury what they did when these two car loads of policemen came there.

A. They came in and said Does John Haley live here. My mother said he did, he just came in. And then they came back in the bathroom where I was at, and they said "Get on some clothes, you are going to headquarters. I put on my short and pants, and as I was going out the door, on the porch, two of them grabbed me by each arm, and the third one grabbed me by the back of the belt.

Q. Was this the shirt you put on, John, that night, before you started up there? (Holding up exhibit)

A. Yes sir.

Q. When you went up to police headquarters?

A. Yes sir.

Q. Then what did they do?

A. We walked down the walk a way, and just as I was [fol. 291] getting into the car, they pushed me, shoved me, into the car and I skinned my right knee against the back seat. One of them sat on each side of me and one was driving.

Q. There were 3 policemen in the car with you?

A. Yes.

Q. Where did they take you?

A. Up to the detective bureau.

Q. When they took you in there, do you know how many policemen there were there?

A. I don't know how many there were there.

Q. Was it quite a few?

A. Yes, quite a few.

Q. What did they do when they took you up there?

A. Well, the first thing they started was saying "We know all about it. You might as well come clean. Go on. You can tell me. I have a boy that is about your age, and your height, he is in school, too. We know you did it, you might as well come on and tell us, to save us time. If you make it easy for us we could get the three of you, and get you off easy."

Q. Which one told you that?

A. That was Detective Young.

Q. What else happened there?

A. Well, I still denied ever being there and he got [fol. 292] mad and he pulled back and smacked me.

Q. How did he do that?

A. He smacked me open-handed.

Q. Where did he smack you openhanded?

A. On the side of the jaw.

Q. How many times did he do that?

A. I don't know exactly how many. He smacked me open handed and then he smacked me back-handed.

Q. First with his palm and then with the back of his hand, is that it?

A. Yes sir.

Q. Then what did he say to you?

A. He said "Go on now, you are going to tell us." I said I didn't know anything about it. He grabbed me by the collar, gave me a sharp jerk—I felt my collar rip, and he started smacking me again. He finally let go of my collar and I fell to the floor. Somebody kicked me in the back. I don't know who that was.

Q. Then what did they do with you after that?

A. He pulled me up and put me back in the chair and started questioning me again. Then they stopped and went out and some more men came in then.

Q. Some more came in? More men?

A. Yes.

Q. The ones that came in—do you know who they were?
[fol. 293] A. No, I don't.

Q. How many of them were there?

A. Two.

Q. What did they do?

A. They did about the same thing as the first ones did.

Q. Did they strike you?

A. Yes.

Q. And how did they strike you?

A. First by smacking me open-handed, and then they started using their fists.

Q. Where did they hit you?

A. They hit me over the head and chest, jaws and everywhere. I tried to throw up my arm to keep it off and then they hit me in the side and everywhere.

Q. How long did they keep that up?

A. From the time I was arrested until about 5 or 5:30.

Q. Did this second bunch who came in to question you, that you didn't know who they were—did they go out later?

A. Yes, they went out and the first ones came in.

Q. How often did that happen, that they did that?

A. I could not say, but pretty often.

Q. Did they keep that up until—you say about 5:30 in the morning?

A. Yes.

Q. Now, John showing you this writing here, this typed paper, marked State's Exhibit D, did you see that during [fol. 294] that inquisition up there that night?

A. Yes, that's the one they made me sign.

Q. That's the paper they made you sign? Is that your signature there?

A. Yes, it is.

Q. What did they say to you when you signed that—before you signed it?

A. They said, they said it was nothing important, just some questions, and you might as well make it easy for us and we'll make it easy for you.

Q. Then did you sign it?

A. I didn't at first, not then. They said "You are going to sign it or else".

Q. You eventually did sign it, did you?

A. Yes sir.

Q. Now then, these over here at the left hand, at the bottom, did you see these men?

A. I saw them, but they did not come in until after I had signed my name.

Q. You had signed before they were brought into the room where you were?

A. That's right.

Q. Did they have a photographer there to take a picture of you?

A. Yes, some time after I signed the statement.

[fol. 295] Q. And before he took that picture of you, what was done about you?

A. They made me wash my nose out with cold water.

Q. Wash your nose? Wash your face?

A. Yes.

Q. Was there blood on your face?

A. Yes.

Q. And on your nose?

A. They made me wash that out, too.

Q. Before your picture was taken?

A. Yes.

Q. Now, when they took you there that evening, John, you say you had that shirt on? (indicating exhibit)

A. Yes.

Q. Had you worn that shirt to the football game?

A. I had.

Q. Is that the shirt you wore? Up there that night?

A. That's the shirt I wore, yes, when they took me up.

Q. What condition was that shirt in when they took you that night?

A. It was just freshly laundered. I had put it on fresh to go to the game.

Q. Were there any tears or rents in that shirt?

A. None whatever.

Q. Do you know who it was that tore this shirt?

A. It was Detective Young. He grabbed me by the collar.

[fol. 296] Q. When he grabbed you by the collar, what happened?

A. He pulled me to my feet and started smacking me, back-hand and off-hand.

Q. Was there any blood on your neck?

A. I believe there was. When he grabbed me in the collar I felt the skin tear behind my neck.

Q. Were there any spots on that shirt of any kind when they came to arrest you?

A. No, there wasn't.

Q. What are those spots on that shirt?

A. Blood spots.

Q. Is that blood from your body?

A. Yes.

Q. Showing you a pair of trousers here, marked for identification as Defendant's Exhibit 2, have you ever seen them before, John?

A. Yes. Those are the pants I was wearing when I was arrested.

Q. You notice this tear back here?

A. Yes.

Q. Do you know what did that?

A. That's when they pushed me up against the wall, I fell to the floor, and they knocked me back there, again.

Q. And somebody kicked you? Is that when?

A. Yes.

[fol. 297] Q. And that's what tore those trousers?

A. That's what tore my trousers.

Q. Were there any tears in those trousers when you put them on?

A. No.

Q. When you got up to police headquarters that evening, did you request them for permission, or did you ask them to telephone your mother? To anybody?

A. Yes, I asked them to call my mother.

Q. What did they say?

A. They said they were not going to call anybody.

Q. Did anybody come to see you there?

A. Not while I was there.

Q. Did your mother get to see you while you were there?

A. No.

Q. And no attorney?

A. No.

Q. How long were you kept up there?

A. Until Tuesday.

Q. Then where were you taken?

A. County jail.

Q. Now, before you signed that document here, did any one of those officers say to you that you could sign that if you wanted to—that you could use your pleasure about it?

A. No sir.

[fol. 298] That you did not have to answer any questions unless you wanted to?

A. They said you would better sign it or else they would take me back into that back room where I came from, again. Said you'd better sign it.

Q. Did anyone explain to you, or tell you that you were entitled to be represented by counsel?

A. No.

Q. And that you were entitled to have somebody called to see you?

A. No, they did not.

Q. Was there anything of that kind said to you at any time during all the time you were up there and were being questioned by these policemen?

A. No, no.

Q. Had you ever been in jail before?

A. No. I had never seen the inside of a jail before.

Q. Had you ever been arrested for anything?

A. No.

Q. Had you ever had any experience with policemen?

A. No.

Q. Did they take you out to your home, John—the policemen?

A. Yes.

Q. When was that?

[fol. 299] A. They took me out there a couple of days afterwards. I don't know just when, but it was a couple of days later.

Q. When you went out there, what clothes were you wearing?

A. When I went back home?

Q. Yes.

A. I was wearing a black pair of pants.

Q. Who had brought them to you?

A. My mother.

Q. Did you see her?

A. No, the guard, he came back with them.

Q. And that's how you got them?

A. Yes.

Q. And that's what you were wearing when they took you back?

A. When I went back home?

Q. Yes.

A. Yes, it was.

Cross-examination.

By Mr. Rossetti:

Q. John, how old are you?

A. Fifteen.

Q. Fifteen. What is the date of your birthday?

A. August 2, 1930.

Q. Are you sure?

A. Yes, that's what I was told. I don't know.

[fol. 300] Q. Of course, you wouldn't know, John. Did you change the date of your birthday up at McKinley School just one month before this killing took place?

A. I did not.

Q. Who did?

A. I don't know.

Q. But you did not?

A. No.

Q. Did your mother?

A. I don't think she did.

Q. Do you know who gave your birthday at McKinley as you having been born on August 2, 1928?

A. 1928?

Q. Yes.

A. No.

Q. Do you know who gave your birthday as August 2, 1929 to the school authorities?

Object.

It is objectionable when you read the date.

Sustained.

Q. Did you, John, at any time since you have been going to school, give the school authorities your age?

A. Yes.

Q. You have?

A. Yes.

Q. And to whom?

A. Every year when we register we give it.

[fol. 301] Q. When was the last time you gave the school authorities your age?

A. I believe it was the first of the year, in September.

Q. What age and birth date did you give then?

A. I gave my right age, fifteen.

Q. What is it?

A. Fifteen.

Q. I mean the date of your birth? That you told them?

A. August 2, 1930.

Q. Did you at one time live at 730 South Cherry?

A. Yes.

Q. Did you at one time go to Wells School?

A. Yes.

Q. And I believe you entered that school April 2, 1941, remember that?

A. I don't remember the year.

Q. Do you remember what date you gave the Wells school authorities as to when you were born?

A. I don't understand the question.

Q. Will you read the question?

Stenographer read question.

A. I don't remember the date. You mean for my age?

Q. Yes.

A. The date I had given—which one do you mean?

Q. Did your mother ever go up with you to the Wells School?

A. I don't remember.

[fol. 302] Q. Did your mother ever go up with you to McKinley High School, John?

A. No. I went up and registered myself, my own self, by myself.

Q. When you went up to register, did they ask you when you were born?

A. They asked me to fill out a form.

Q. Now, this last form you filled out in September of 1945, what did you put down—what date, as to when you were born?

A. August 2nd, 1930.

Q. Are you sure?

A. Yes sir.

Q. And if those McKinley High School records show you gave the date of August 2, 1929, could you be mistaken?

Object.

Sustained.

Q. To make it clear, when you started at McKinley High School this last year, last September, 1945, you told them you were born August 2, 1930?

A. That's right.

Q. And as far as you know, John, you don't remember whether or not you told any other school authorities you were born on another date?

A. That's right.

Q. You don't remember? Or you did not?

A. I don't remember.

[fol. 303] Q. You are a senior, aren't you?

A. That's right.

Q. And you have got pretty good grades at McKinley High, haven't you?

A. Fair.

Q. How many credits do you have, or how many did you have at the end of your Junior year?

Object.

Sustained. Don't take time on that.

Q. All right, John, you said you left home on the night of October 14th about 6:30?

A. Approximately that.

Q. And went to the Theresa Cone Shop?

A. Yes.

Q. And met Parks and Lowder there?

A. That's right.

Q. And I will ask you whether Al Parks did not say that if he had a gun he could do almost anything?

A. No, he did not.

Q. Did Lowder say that?

A. No. Not to my knowledge, he did not.

Q. How did the discussion of a gun come up?

A. We were talking about Western movies.

Q. Who mentioned guns?

A. The first thing that comes to my mind was talking about western movies. One boy mentioned about seeing them shooting.

[fol. 304] Q. Who mentioned the gun that night?

A. I don't know.

Q. Did you mention the gun?

A. In this trunk?

Q. Yes.

A. We were talking about guns.

Q. Did you tell Parks and Lowder that your stepfather had a gun at home?

A. I didn't tell them anything about my stepfather. I haven't got a stepfather at all.

Q. Did you tell Parks and Lowder that you knew where there was a gun?

A. Yes.

Q. You told them that, didn't you?

A. Yes.

Q. And you and Parks——(interrupted)

A. We were talking about guns and I told them about this gun and they asked to see it.

Q. Who asked to see it?

A. I don't know which one. We were all talking, all of them were talking.

Q. So either Parks or Lowder asked to see that gun, is that right?

A. Yes.

Q. You don't know which one asked that?

A. No.

[fol. 305] Q. Then you and Parks went home to get it, did you?

A. No.

Q. Who did go?

A. All three of us went.

Q. Who went into the house?

A. I did.

Q. Where was the gun in the house?

A. In the bathroom.

Q. In a trunk?

A. Yes sir.

Q. It was, was it? I didn't hear you.

A. Yes sir.

Q. And the gun was not loaded in the trunk there, was it?

A. No.

Q. And you got how many shells?

A. I don't know. A handfull.

Q. Where in the house did you get the shells?

A. Under the stairway in a closet.

Q. In a closet under the stairway?

A. Yes.

Q. In a closet there?

A. Well, not exactly in a closet. Just a little place under the stairway.

Q. How many shells did you get?

A. I don't know. I just reached in and got a handful. [fol. 306] Q. After you got that gun and the handful of shells, what did you do?

A. I went back out and I never had loaded a gun before a gun like that.

Q. But you did load it that night?

A. I did not.

Q. Who did?

A. Both of them. All three of us did.

Q. Just how could three of you load a gun, John?

A. They took out something under the hammer. I don't know what it was. He took out something under the hammer, you put the bullet in there. I never saw how you put a bullet in that kind of a gun.

Q. Are you sure you did not load that gun yourself on that night, John?

A. Positive.

Q. Who did then? Parks or Lowder?

A. We were all doing it, putting some in that little thing that came out of the hammer.

Q. How many bullets did you put in the gun?

A. I did not count them.

Q. Six?

A. I don't know.

Q. Was it loaded after you put the bullets in?

A. I suppose it was?

Q. Will you tell this jury why you loaded that gun on that night?

[fol. 307] A. I don't know exactly why. The reason why I got it was because I was figuring on going out in the woods and firing it. I never had much experience with it.

Q. You, Parks and Lowder did not even talk about going out into the woods to shoot that gun, did you?

A. Yes sir.

Q. You talked about going out into the woods to shoot that gun, is that what you are telling us?

A. He asked to see it and I said I can get it and then we can go out and shoot it at Myers Lake Park or some place.

Q. Anyway, now you say you were going to go out into the woods some place and shoot it?

A. That's right.

Q. You never did get out to the woods or some place, did you?

A. No.

Q. Why didn't you go out to the woods or Myers lake Park as you said?

A. I don't know exactly why.

Q. Now, John, after you got the gun you were all together, you and Parks and Lowder, were you?

A. Yes sir.

Q. Then you decided you would walk around down, didn't you?

A. We did.

[fol. 308] Q. Walk around town and look for a place to hold up?

A. No. You have got that wrong.

Q. I got that wrong?

A. You surely did.

Q. You did walk around over the southeast end of town?

A. Not right away.

Q. Well, some time you walked around over the southeast part of town?

A. Yes.

Q. And then you went up and walked around over the northeast part of town?

A. Yes.

Q. And then you walked over to the southwest part of town and walked around there?

A. Yes.

Q. Now tell the jury why you walked around all over town that night?

A. For no special reason at all. It was a nice day, it was not too hot and not too cold, so we just kept on walking around, I suppose.

Q. You were not looking for a place to hold up at all?

A. No.

Q. Are you sure?

A. Positive of it.

Q. All the time you people were walking around over the city of Canton, you had this loaded gun in your pocket, [fol. 309] didn't you?

A. I had completely forgotten all about it that we had a gun.

Q. You did have it?

A. Yes, we had it, but I did not have it. One of the other two did. I don't know which one.

Q. But the three of you had this gun?

A. Yes.

Q. Who carried it?

A. I don't know which one.

Q. You don't know?

A. I don't know which one was carrying it exactly.

Q. And that brings us up to McKinley and Navarre Street, Southwest. About what time did you get there?

A. Around about 20 minutes or 15 minutes of 12, I think.

Q. John, what time did you three fellows steal this gun?

A. I would say around about 9 or 9:30.

Q. You stole that gun about 9 or 9:30 and from that time until about 12,—about 2½ hours, you were walking over the streets of Canton. Is that right?

A. That's right.

Q. Do you remember passing the two women alongside the Karam Store?

A. No, I do not.

Q. Were you three fellows walking side by side on the sidewalk?

[fol. 310] A. I just don't remember that. We were just walking along and talking.

Q. Were you wearing this that night? (Holding up cap.)

A. No.

Q. You were not wearing this that night?

A. I was not.

Q. This is State's Exhibit G, the cap. Will you say that on, John?

Witness put cap on head

Q. Is that the way you were wearing it that night?

A. No.

Q. Did you have it on?

A. I did not have it on that night.

Q. You were wearing this cap on the back of your head on that very night.

A. No. You have that twisted.

Q. I have that twisted again?

A. Yes, I did not have on that hat at all, and I did not have that coat on.

Q. I didn't ask you that yet. Now, showing you what is marked as State's Exhibit F, is this yours?

A. That's mine but I did not have it on that night.

Q. You did not have that coat on that night?

A. No, I did not.

Q. What did you have on that night?

[fol. 311] A. I had on a brown coat, reversible.

Q. Something like this, but not this color?

A. That one is too small, That's why I did not have it on.

Q. How do you mean?

A. I mean, I had it around the house there, but it was too small. The sleeves are almost up to my elbows.

Q. What cap were you wearing that night?

A. No cap. I had on a hat.

Q. What did Parks have on?

A. I suppose he had a hat on.

Q. Porkpie hat?

A. I don't know what kind, but it was a hat.

Q. What did Lowder have on?

A. I suppose he had on a hat too. I don't know.

Q. You know what a porkpie hat is?

A. I believe I do.

Q. There was a picture of it in the Canton paper?

A. I saw it.

Q. And that is the kind of hat Parks had on that night?

A. Well, I don't just know what colored hat he had on. I don't think it was that one.

Q. Was it that same type of hat?

A. A slight resemblance.

Q. And you were not wearing a cap that night?

A. No sir.

[fol. 312] Q. Now, as you got down there to the corner of Navarre and Market, what was the first thing any of you three fellows said?

A. I don't know which one, but one of them said they were going in the store and I said it is getting late and I would better get on home.

Q. Well now, John, you certainly remember who had said anything first, don't you?

A. Well, it was just a general talk, remark, I don't know which one it was.

Q. Did you mention that first, go go into the store?

A. I did not. I was going in home.

Q. If you did not mention it first, to go in there, it was one of the other two?

A. Yes, I don't know which one did.

Q. You don't know which one it was?

A. No.

Q. What did you — when they mentioned about going into this place?

A. I said I would better be getting on toward home, it is getting late.

Q. Is that what you said?

A. Yes.

Q. Did you go on home then?

A. I didn't have any business in there.

Q. Did you go on home?

[fol. 313] A. They said Wait just a minute and we will go in. You wait for us.

Q. You waited until either Parks or Lowder went inside the store to hold up Mr. Karam?

A. I didn't know what they went in there for.

Q. You mean to say you did not know what they went into the Karam store for?

A. No. I didn't.

Q. What did they tell you as to what they were going into the Karam store for? Tell the jury what they said and what you said about that.

A. They just told me that.

Q. I would like to hear that again.

Court: Is there any more, not again. But anything more they said. Is there anything more?

A. No, that is about all that I remember.

Q. Can you tell us the exact words either Parks or Lowder said when this talk about going into Karam's store came up? This discussion?

A. It wasn't exactly a talk, or discussion.

Q. What was it?

A. They asked me to go in with them.

Q. To do what?

A. They did not say what to do.

Q. They did not tell you what they were going into the store for?

A. No.

[fol. 314] Q. Did they say they were going to buy something?

A. I just don't know what they were going in for.

Q. But you said you were going on home?

A. I said it was getting late and I didn't want to stay out so late. I didn't make a habit of staying out too late.

Q. You boys had been together all night, hadn't you?

A. Practically all evening.

Q. And then just at the last moment you decided you wanted to go home?

A. It was getting late then.

Q. And you didn't even want to wait long enough for Parks and Lowder to go in to Karam's?

A. I didn't have any business in there.

Q. Who had the gun when these boys went into the store?

A. I don't know which one had it.

Q. You know what you told the police about who had that gun, don't you?

A. I know what they made me say.

Q. Now, one of them did have the gun, didn't he?

A. I suppose they did.

Q. Do you know whether or not one of them had that gun before they went into that store?

A. Well, right after I got out of the house—but then I did not see it since then. I don't know if they had it or not.

[fol. 315] Q. Didn't you tell the police you gave the gun to Lowder after you met in the Cone Shop?

A. I did not.

Q. You did not dispose of the gun before you got to the Karam store, did you?

A. No.

Q. They did not dispose of it?

A. I don't know anything about it.

Q. You were with them. You would have seen it if they had disposed of it.

A. I did not watch their—every move they made.

Q. Then you don't know whether they had that gun when they went into the store or not?

A. I don't know.

Q. Or before they went in?

A. I don't know.

Q. Where were you standing while they were in the store?

A. Right on the corner.

Q. With your back to the window?

A. That's right.

Q. Why did you have your back to the window?

A. No special reason. Just happened to be standing there that way.

Q. You were standing there where you could look both up and down the street?

A. No.

[fol. 316] Q. You were the lookout, John?

A. No.

Q. You mean to tell this jury that you did not know those boys were going in there to rob this man?

Object.

Sustained.

Q. Were you the lookout?

A. No.

Q. Were you to tap on the window—(interrupted)

A. No.

Q. If anyone came in sight?

A. No.

Q. You did look up and down Market and Navarre, didn't you, John?

A. I was standing on the corner.

Q. Did you look up and down Market?

A. I had no occasion to.

Q. Well, did you?

A. I don't think I did.

Q. You say you heard a shot?

A. Yes.

Q. Where did that come from?

A. I don't know where it came from. I was standing there and everything seemed quiet, and all of a sudden I heard a shot and I left and ran toward home.

[fol. 317] Q. You say you did not know you and the others were going there to rob Mr. Karam?

A. That's right.

Q. And you heard a shot?

A. I heard one.

Q. Why do you remember?

A. Why, I was standing there and everything was quiet and all of a sudden I heard a shot and a man hollered, and I was scared and I ran.

Q. Is that why you ran?

A. That's right.

Q. Can you tell this jury why you can off?

A. Because I was scared.

Court: What was that question and answer?

Stenographer read both question and answer.

Q. What were you scared of?

A. I don't know what to think. I didn't know what happened.

Q. And you ran across Market, did you?

A. I ran across Market.

Q. And ran into a man named Simon?

A. I did not.

Q. You brushed by him?

A. I did not brush by him.

Q. You did not run into that man at all?

A. I don't remember passing any man on the street, on the corner.

[fol. 318] Q. Do you remember going across Market and Navarre?

A. I ran down the tracks, yes.

Q. That's on the southeast corner of Navarre and Market?

A. No. I ran down alongside the tracks.

Q. Is there a street there along the tracks?

A. A sort of one-way street.

Q. Did you run by some shops?

A. When I left there?

Q. Yes.

A. No.

Q. Were there any there?

A. No, not at the corner of Market and Navarre.

Q. Did you run over a lawn?

A. No. I did not run over a lawn.

Q. Which direction did Parks and Lowder run?

A. I don't know. I left.

Q. And you met them later?

A. I went down to the first alley, turned to my right, and then I saw them coming on the alley parallel to the one I was on.

Q. What was said between you and your companions after you met in the alley?

A. Nothing, I think. I was running and they were right behind me. After we came out by the Park I asked what

happened and they said "Just forget about it" and I went home.

[fol. 319] Q. Then didn't you know what happened to the gun? Didn't you ask?

A. I didn't ask them anything else.

Q. Just what was it you did say?

A. I asked what happened?

Q. Didn't you ask what happened to the gun?

A. No.

Q. The gun was taken from your house?

A. Yes.

Q. And weren't you interested in knowing whether the gun was lost, where it was, after this shooting?

A. I had forgotten all about that. I was so excited.

Q. You forgot about it altogether?

A. Yes.

Q. Showing you now what is marked for identification as State's Exhibit H, is that the gun you took out of the trunk in the bathroom in your home? At your stepfather's?

A. I haven't got a stepfather.

Q. Is that the gun you took out of the trunk in your home?

A. I can't say it is. I can't identify it.

Q. Look at it.

A. I wouldn't have any way of identifying it. I couldn't say it was.

Q. Was the gun you took out of that trunk a 32 automatic Colt?

[fol. 320] A. I remember about it being a 32.

Q. Was it a gun that looked something like this one?

A. Yes.

Q. This could be the same gun, could it?

A. It could be, but I don't know if it is. I can't identify it.

Q. Can you take it apart?

A. I don't think I could.

Q. Try it.

A. (Witness handled gun). I don't see where you take it apart at.

Q. Of course, you don't have any idea how to take that gun apart?

A. No, I don't.

Q. You never did before?

A. I never took it apart before.

Q. What did you do when you loaded it up that night?

A. I wasn't the one that loaded it.

Q. You said all 3 of you did?

A. I wasn't by myself. Somebody else took something out here.

Q. Show us what part you took when the three of you were loading that gun that night?

A. I don't know exactly which part it was. This comes out but I don't know what this is here.

Q. What did you do?

[fol. 321] A. I don't know how you put it in, I didn't know at all then, and they showed me, and I had one in my hand and I put the next one in.

Q. Who took it apart?

A. I don't know exactly which one.

Q. Why is it you don't know which one of them it was took it apart, Mr. Haley?

A. I wouldn't have no occasion to remember the name.

Q. Now, you shot this gun on New Year's Eve, didn't you?

A. I don't know whether that was year before last or last year.

Q. You know how to shoot it?

A. Anybody can pull the trigger.

Q. You know how to shoot it?

A. I don't know exactly how to handle it.

Q. Did you see this gun or one like this, around the house where you live?

A. I don't know if it was this one or not.

Q. The gun has been seen by you in this house where you and your mother live?

A. I don't know whether it is that one.

Q. Or one like it?

A. It looked like that one.

Q. You have seen it around the house?

A. The only time I saw it around the house was New Year's.

Q. Is that the only time?

[fol. 322] A. Yes.

Q. How did you know it was in that trunk?

A. I saw him put it in the trunk.

Q. How did you know where the bullets were?

A. I saw him put them back there too, and once he took some out.

Q. That night after the three of you met after the shooting, you asked what happened, did you?

A. Yes, I did.

Q. Did any of your companions or you yourself, say anything about the gun?

A. No. They said to just forget about it. And I went on home then.

Q. What did you three do after you had met there?

A. I told you,—I went home.

Q. Did you meet the next day?

A. I saw them at school, but then we didn't have time to talk. That is a big building up there. I had to go — my classes.

Q. Then it was some time after the shooting that you and Parks and Lowder met again, wasn't it?

A. Not the next day. I passed them in the hall, and I had to hurry to class.

Q. When was the next time the three of you got together and started talking about the shooting?

A. I can't remember when.

[fol. 323] Q. You say you didn't know what had happened there in the Karam store while you were on the corner?

A. No, but I heard about it on the next day.

Q. From whom?

A. Everybody was talking about it around school.

Q. Whom did you hear it from?

A. I don't know who told me exactly, but there was a rumor going around the school and I picked it up somewhere there.

Q. A rumor about what? You say a rumor?

A. About a man who was shot.

Q. Is that the first time you heard anything about it?

A. That's right.

Q. Didn't you give any thought as to what happened when you were standing in front of the Karam store and heard that shot you told us about?

A. Yes, I did.

Q. What did you think about it?

A. I don't know what I thought at the time. I was scared to death.

Q. Didn't you think that Parks and Lowder had killed Mr. Karam?

A. I had no thoughts about that.

Q. You did not think anything like that at all?

A. I did not have any thought about it at all.

[fol. 324] Q. Parks and Lowder were picked up the same morning of the murder, weren't they?

A. I don't know. I suppose they were.

Q. And you were not?

A. No. I was at home.

Q. The first time you were picked up by the police was on the 19th, remember that?

A. Yes.

Q. Now, between the 14th of October and the 19th, how many times did you see Parks and Lowder?

A. I don't know. I did not count them.

Q. Do you have any idea how many times.

A. I have no idea.

Q. More than once?

A. I seen them almost every day. I don't know how many times I saw them.

Q. Now, did you and Parks and Lowder talk about the shooting between the 14th and the 19th?

A. No.

Q. Not at all?

A. Not at all.

Q. Did you talk about the gun at any time between the 14th and 19th of October?

A. No. I asked them what happened to it.

Q. You did ask them that?

[fol. 325] A. Yes, and they said they got rid of it.

Q. Whom did you ask that?

A. I don't know which one.

Q. You don't know which one you asked?

A. No, both of them were together when I asked that.

Q. But you did ask what happened to the gun?

A. Yes.

Q. What were their words to that?

A. They said they got rid of it.

Q. Who said that?

A. I don't know which one. They were both there.

Q. Did both of them talk at the same time?

A. Both of them were there, both of them. All three of us was talking together. I don't know just which one of them said that.

Q. Do you remember when it was the three of you got together and you asked about the gun?

A. I don't remember if it was the next day or the day after that.

Q. And did you ask them about the gun and what became of it at any time after that?

A. No, they both said they had got rid of it.

Q. Now, you were arrested on the 19th of October, around midnight, is that correct?

A. Approximately that time.

[fol. 326] Q. And was your mother up when the police came there?

A. She was in bed. She got up.

Q. Did she let them in the house?

A. Yes.

Q. Your mother saw the officers?

A. I suppose she did. She let them in.

Q. What else did you wear that night besides this pair of pants and shirt?

A. I had on a black sweater with a McKinley M on it.

Q. Where is that now?

A. At home, but I had that on.

Q. The night you were arrested?

A. That's when I went to the football game.

Q. When you were arrested and taken to headquarters, what were you wearing?

A. A long white trench coat.

Q. What else?

A. I was wearing, I think, a wine colored hat, sort of a sailor hat.

Q. What pants were you wearing?

A. Those pants there.

Q. What shirt?

A. That same shirt there.

Q. What kind of a tie?

A. I don't think I had on a necktie at that time. I am not sure. I don't think I did.

[fol. 327] Q. Where is the coat you were wearing that night that you were arrested?

A. Where is the coat?

Q. Yes, where is it?

A. I suppose it is at home. I don't know where it is at for sure.

Q. Now, how do you say these pants were torn?

A. When they had me up against the wall, I fell sideways, when I fell it was.

Q. That was at police headquarters.

A. In the detective bureau.

Q. Don't you remember saying last Friday that your pants were torn when you were shoved up against the door, and the pants caught on something.

A. I said I was pushed against the door.

Q. Didn't you say your pants caught on something?

A. I don't remember making that statement.

Q. You don't?

A. No, I don't.

Q. And you were being questioned by the officers at that time, were you?

A. Yes.

Q. Which officer was it that told you he had a boy about your age?

A. That was Officer Young. He sat down and we were [fol. 328] right facing each other and he started telling me a sad story that he had a boy my age and he didn't want to see anything happen to me. I still denied it.

Q. When he started to talk he was pretty nice to you, was he?

A. Yes, he said—he talked nice and told me he had a boy about my age and wouldn't want to see anything happen to me. I denied it, and then he reached over and smacked me.

Q. And all he said to you was for you to tell the truth?

A. He said more than that.

Q. Did he tell you to tell the truth?

A. He said a lot of things. That was one of them.

Q. What did you tell Officer Young first as to where you were on the night of October 14, 1945?

A. I told him I was at the show.

Q. And that was a lie, wasn't it?

A. Yes, it was.

Q. What else did you tell him?

A. What else?

Q. Yes, what else?

A. That's about all, I think.

Q. You told him that you and your two friends went to a show that night, didn't you?

A. Yes.

[fol. 329] Q. Did you ever tell Detective Young or any other police officer that you, Parks and Lowder talked about Western movies that evening?

A. I don't quite remember if I did or not. I don't think so.

Q. Did you ever tell Officer Young or any other officer that the three of you talked about Western movies and guns in them?

A. No, I don't believe I did. I don't remember that I did.

Q. You never told them anything about that, like that?

A. They never asked me.

Q. You knew the police were questioning you about this killing, didn't you?

A. They were not exactly questioning me.

Q. What were they doing?

A. He had me bumping my head against the wall.

Q. Bumping your head against the wall?

A. Yes.

Q. Now, who hit you?

A. Wells, he was one, and Young was one. I don't know the names of the others.

Q. Don't you remember last Friday you said that Officer Wells had not hit you?

A. I said Burnowsky did not hit me.

Q. Didn't you say that about Wells?

A. I don't remember saying anything about Wells then.
[fol. 330] You said Young hit you, Sgt. Young?

A. Yes, he did.

Q. And you could not think of the names of anyone else?

A. Well, I learned the name afterwards, and they were Wells and Young, and some more, but I don't know their names.

Q. Can you say which officer used his fist on you?

A. Young.

Q. Where had he hit you with his fist?

A. All over my head,—everywhere.

Q. On your body?

A. Yes, on my body. I had bruises and marks where he hit me.

Q. Did he beat up on you?

A. Yes.

Q. Well, where?

A. Oh, everywhere.

Q. Hit you in the eye?

A. I don't remember just all where, but all over the head, I know.

Q. John, If you were hit that night, you would remember where you were hit, what parts of your face?

A. I wasn't counting anywhere where he hit me, I was concentrating on when he was going to stop.

Q. You mean to tell this jury that after all this beating [fol. 331] you say you had, you don't remember whether you were hit in the eye, the nose, mouth or the jaw?

A. I was sitting up there, and wasn't concentrating or thinking about just where he was hitting me.

Q. Are you sure, John, that you were ever hit at all?

A. I am positive of it.

Q. Did you say anything to the Juvenile Court about being hit by any police when you were up there?

Object. Ask jury to disregard it, please, particularly the last.

Sustained, it is stricken, particularly the last part.

Q. When was the first time you told anyone about that, about being hit by the police officers?

A. When my mother came, I told her. She came out to visit me in the county jail.

Q. You told her for the first time when you were in the county jail and she came there to see you?

A. That's the first I saw her.

Q. Now, Officer Burnowsky did not hit you, did he?

A. No, he did not.

Q. Was he nice to you?

A. He was not exactly nice. But he did not strike me.

Q. Was he mean to you?

A. Yes, he was.

Q. Was he talking mean to you?

[fol. 332] A. He called me all kinds of names.

Q. He did?

A. He did.

Q. Anybody else call you names?

A. Everyone in there about, called me different names.

Q. Now, when the police first started to question you, you did not tell them the truth?

Object.

Court: Haven't we been over that? Go to something new.

Q. I will withdraw the question. John, what time did you tell the truth to the police?

A. I didn't exactly tell the truth. They made me sign something they put up to me. It was not my statement. It was theirs.

Q. You mean this statement, the police drew that up themselves?

A. The biggest portion of it.

Q. Is that right?

A. That's right.

Q. Which part of it is true?

A. A very little of it.

Q. The 32 calibre gun is true, isn't it?

A. I suppose that's what it said on there.

Q. Did the police—strike that please. Who knew about your gun at your home? Did the police know about it, or who told that?

A. I don't know just what you mean.

[fol. 333] Q. Did the police know that a gun had been in your home? Did they know about you going home to get a 32 calibre gun?

A. That's what Parks' statement indicated, it being a signed statement almost the same as this.

Q. The police questioned you a couple of hours, and you did not tell them the truth?

A. They questioned me more than a couple of hours.

Q. Now, before you did make a statement to the police, you were shown a statement of Parks and one of Willie Lowder, were you?

A. Just Parks, that's all.

Q. And they asked you to read that?

A. Yes.

Q. And you read it?

A. I did.

Q. Was what was in Parks' Statement, true?

A. Not all of it.

Q. Just part of it?

A. Yes.

Q. And in Parks' statement, you were mentioned, were you not, John?

A. Yes.

Q. Did Parks lie—

Object Sustained.

[fol. 334] Q. After you read the statement of Parks, that's when you made your statement to the police?

A. Not right away.

Q. But you did afterwards?

A. Yes, a little while afterwards.

Q. But you read Parks' statement first?

A. Yes, and after I read it they said "You are going to sign one just like it." And they started smacking me all over again.

Q. Which officer did you tell your stories to about this statement?

A. I believe it was Young and Wells, but I am not sure.

Q. You confessed to Young and Wells, did you?

Object.

A. I did not exactly confess.

Sustained. Jury will disregard the question.

Q. John, didn't you tell Young and Wells that you were with Parks and Lowder on the night of October 14, 1945?

A. That's what they made me say.

Q. Did you tell them that?

A. Yes, after he made me.

Q. And you told Officers Wells and Young everything about where you were that night, didn't you?

A. No. They would say you were such and such a place. I would say no, I wasn't. Then they would smack me and say Isn't that so, You know it is, and they would smack me all over again.

[fol. 335] Q. The part in this where you say you met Parks and Lowder at the Cone Shoppe is true, is it?

A. Yes, sir.

Q. And this part where you say about 6:30 in the evening. Is that true?

A. Approximately that.

Q. And there was a conversation between you, Parks and Lowder about a gun. That's correct, is it?

Object. He has been all over that.

Mr. Rossetti: I am referring to the statement now.

Reporter read questions and answers last above upon request of Court.

Q. Who told the police about the gun being in the trunk, John?

Object Sustained.

Object overruled. Exception to Deft.

Q. I beg your pardon. Did you tell the police the gun was in the trunk?

A. That was in Park's statement.

Q. Then the police—strike that. Did the police ask you when you made the statement whether the gun was in the trunk at your home?

A. I didn't say anything. Then they started smacking me around and finally I said that it was.

[fol. 336] Q. Can you tell us, then, how Parks knew that your gun was in the trunk in your home?

Object.

Sustained.

Exceptions.

Mr. Rossetti: They are all tied in together.

Mr. Jones went to bench and objects and asks the court to instruct the jury to disregard the statement counsel just made. He said in front of the jury they are all tied in together.

Court: You step up here.

Thereupon Mr. Rossetti and Mr. Jones went to the bench.

Court: Did you make that statement?

Mr. Rossetti: I answered Mr. Jones' statement when he objected and said—

Court: If the jury heard any statement made by Mr. Rossetti to anybody else, jury will disregard it. It is out of order for any lawyer examining a witness to comment. The lawyer's business is to ask questions and the witness is to answer. When it is answered, then go to another question: Comment is out of order, is not evidence. If there are comments made hereafter the jury will disregard them, and if the jury heard any comment here, the jury will disregard it.

Thereupon it being time for recess, the court repeated his cautions and admonitions to the jury as to their conduct during recess, and the jurors retired to their respective rooms during a brief recess.

[fol. 337] Mr. Rossett: Now comes the State of Ohio and moves for a mistrial because of the conduct of the court.

Court: For what reason?

Mr. Rossetti: I will give the reason, Your Honor. For this reason,—the way the court looked at me and said "You step up here". I don't know what the jury must have thought. Apparently the court misunderstood my com-

ment.. If the court will explain to the jury it was a misunderstanding, I think it will right it.

Court: When was this?

Thereupon Court had stenographer read questions and answers and comment of Mr. Rossetti.

Court: Motion overruled. Exception to State.

Thereupon court and attorneys conferred off the record and out of hearing of stenographic reporter.

After recess.

Mr. Rossetti, on behalf of the State, resumes cross-exam. of Defendant JOHN HALEY.

Q. 'Do you recall at the time you read Parks' statement, how many pages it contained?

A. No, I don't. I know it was about 3 at least, but — know just how many pages it was.

Q. In this statement you gave to the police, who asked the questions?

A. Officer Burnowsky.

[fol. 338] Q. Who?

A. Burnowsky asked what questions were asked.

Q. He asked you the questions?

A. What questions were asked.

Q. Was Officer Burnowsky seated at a typewriter?

A. Yes.

Q. And he asked the questions?

A. That's the questions he asked and put down.

Q. Who else asked questions at the time this statement was being taken on the typewriter?

A. I don't know whether the other officers asked me any questions then or not..

Q. But one was Burnowsky, who asked you, right?

A. He was one of them, yes.

Q. When he asked you, did you answer his questions?

A. Not all of them that are in there.

Q. Where did Officer Burnowsky get the answers that you did not answer, and that he put in here?

A. You would have to ask him about that. I don't know where.

Q. Can you point out the questions that you answered on this statement?

A. I don't know for sure. I might be able to.

Q. Will you look at this statement and let us know?

Witness looked over paper statement.

A. Do you want me to point out the true or the false ones?
[fol. 339] Q. I asked the true ones.

A. I first started out with the name, address, age and all that. Birthplace, school, what grade I was in, what school. He asked general questions. Then he told me to relate my activities on October 14, 1945. These activities are what they had me say.

Q. What did you tell them at that time when Burnowsky was writing this down,—what activities you had on that night?

A. I told them I went to the show and he put that down.

Q. And that is not true, is it?

A. I did not go to the show.

Mr. Mills: They have been over that. Object.

Q. I am referring to the confession. In answer to a question regarding your activities on the night of October 14, did you tell Officer Burnowsky you left home at 6:30?

A. No. I did not say what time I left home. It was almost dark, I told him.

Q. And this part that refers to the Felder's Biscuit company. Did you tell that to Officer Burnowsky?

A. That was in Parks' statement and he took that out of there.

Q. That is correct, however, is it not?

A. Yes, but I did not tell him that.

[fol. 340] Q. Now, who went into the house with you when you got the gun?

A. No one. I told you that before.

Q. Where was the gun?

Deft. Objects. He has been all over that.

Q. I withdraw that question. I will ask you whether or not, in answer to the questioning put to you by Officer Burnowsky, as to where in the house was the gun kept, you did not answer "In the bottom drawer". Did you tell that to Burnowsky?

Object. That's in evidence.

Court: Anything that you have not asked.

Q. He said part of this is true and part is not, and I want to find out what he claims is not true.

Court: Then why don't you read a statement and ask if that is true or false.

Question read upon request of court.

Objection overruled.

Exception to defendant.

A. I did not tell him anything. I told him I went to the show.

Q. Was the gun in the bottom drawer—

Object.

Overruled.

Deft. excepts.

A. Yes.

Q. It was?

A. Yes.

[fol. 341] Q. Mr. Haley, so there may be no misunderstanding, in answer to the question put to you, you did not give Officer Burnowsky that answer. Is that what you mean?

A. No. I did not give that answer.

Q. Now, John, who told you to sign that statement "or else"?

A. Both Young and Wells. They were both questioning me, and they told me I was going to sign a statement or else.

Q. What did you say?

A. First I told them I didn't want to sign it, and they said I would sign it or else,—they would take me back into the back room again. And so I signed.

Q. Did Officer Burnowsky have any conversation with you at all before he started to type your answers?

A. When I first got arrested and was carried up there, he talked to me a little bit. But after he left and came back, he asked me a few questions, name and age and general things like that, then.

Q. I mean this written statement you signed. Did Officer Burnowsky say something to you before he started to take the statement?

A. No, he did not.

Q. Did he say anything to you about whether you had a right or did not have a right to make the statement?

[fol. 342] A. He didn't say no such thing.

Q. He did not say that at all?

A. No.

Q. Are you sure?

A. Positive of that.

Q. Then what did Officer Burnowsky say to you when he started to take this statement?

A. He didn't say anything,—except state your name, and address, age, and all that. That's about all.

Q. But you did sign this statement?

A. Yes, after they made me. After they threatened to take me back in the room again.

Q. Right at the time you sighed it, were you hit?

A. Not at that time, but they said if I did not, I would get it worse than the first time. So I signed.

Q. Do you know about Captain Quilligan being there when you signed this statement?

A. There was another man there. I don't know who he was.

Q. Did he ask you to stand up?

A. He did.

Q. Did he ask you to hold up your right hand?

A. He did.

Q. Did he ask you to swear that it was the whole truth in the statement?

A. First when he asked me to stand he asked me to raise my right hand. Then Officer Young said to me in a — [fol. 343] "Raise your right hand", and I raised it.

Q. After you swore to tell the truth, then you signed the statement, did you?

A. After they made me sign it, I signed it.

Q. You did see a witness there, two of them, did you not?

A. After I had signed it, they brought them in.

Q. Were you eating peanuts at the time you signed this statement, John?

A. That's what I bought from the machine.

Q. Were you eating peanuts?

A. Yes, I was.

Q. And I believe after the statement was taken, your photograph was taken? Is that right?

A. That's right.

Q. You, Parks and Lowder together?

A. Yes.

Q. Do you remember what clothes you had on when that picture was taken?

A. I think I had on those same clothes that are in exhibit here.

Q. That shirt and pants here?

A. That's right.

Q. As a matter of fact, didn't you have a white shirt on, John?

A. I did not.

[fol. 344] Q. How did the blood get on this shirt?

A. That was on there from my nose and the place on the back of my neck.

Q. You don't know, you said, whether you got hit on the nose or not? Didn't you say that?

A. I should know.

Q. You said you don't remember where you got hit?

A. I said I got hit all over the head. I can not say the exact spots.

Q. Did you get hit in the nose?

A. I must have. It was bleeding.

Q. Do you or do you not know whether you were hit in the nose?

A. Sure, I do.

Q. Well, were you? Sure you were hit in the nose?

A. It was most of the time he was hitting me all over the head that my nose started bleeding.

Q. Where else was there blood?

A. There was blood from my neck, I think.

Q. How did blood get on the back of your neck?

A. That's when he jerked me up and started raving, ripping and tearing,—is what started the bleeding behind my neck.

Q. How did that start to bleed?

[fol. 345] A. When he reached down and grabbed me by the collar and jerked me up.

Q. You mean you put your hand there and felt blood?

A. I didn't put my hand back. It felt like it.

Q. How did this blood get on your shirt collar?

A. I just told you. I started bleeding behind my neck.

Q. How did this get on there (Pointing to exhibit)?

A. That's probably from my nose.

Q. How about back here?

A. That's where they threw me to the floor and skinned my arm, or my elbow.

Q. They threw you to the floor?

A. Yes.

Q. How did the blood get on the inside of your collar, John?

A. That's not on the inside.

Q. Isn't it? (Showing.)

A. Unless it went through or something.

Q. Do you think that went through (showing)?

A. It is possible.

Q. There seems to be a little more blood on the inside than on the outside of the collar?

A. It could have been turned inside, the collar. I was not going to a social party up there or anything. After being jerked all around my collar could have been anyway, turned in or torn off.

[fol. 346] Q. You think the blood went through the collar?

A. It is possible. I don't know whether it did or not.

Q. It is a little darker on the inside of the collar than on the outside, isn't it?

A. It looks so.

Q. How did that blood get on the front of your shirt?

A. My nose was bleeding.

Q. Didn't you have a handkerchief?

A. I did not.

Q. Now, how did these pants get ripped like this?

A. I told you that already.

Q. By a kick?

A. That's where it started.

Q. A kick did this?

A. It did. They were rather tight fitting pants and I was in a stooped position when he kicked me.

Q. What about the tear down here?

A. I don't know exactly when that happened.

Q. Are you sure you did not tear these pants when you ran away from Karam's store that night, running down the tracks on Navarre Road?

A. I just said I was not wearing those pants when I was arrested. They just came from the cleaners. I put them on before I came up with the police.

Q. And a kick did this?

[fol. 347] A. Yes, that started it. They were rather tight-fitting pants. Almost every time I stooped over they ripped a little.

Q. Weren't you seated in the chair most of the time?

A. Not most of the time. They jerked me up and kicked me around the room.

Q. After you had signed the statement, the police went out and got you a sandwich?

A. No, not me.

Q. Did they get anybody a sandwich?

A. Not to my knowledge, they didn't. They gave me a cold cup of coffee. That was all.

Q. They brought in coffee to you?

A. Yes, cold coffee.

Q. You were taken back down to your home, weren't you?

A. Not that same night.

Q. When were you?

A. It was a few days later. I don't know when.

Q. Two days after that?

A. A couple of days, I don't know just when.

Q. Will you refresh your recollection and try to ascertain just what day it was that the police took you back to your home after you made the statement?

A. I can not say the exact time. There weren't no watches in there. It was away back in the back cell.

[fol. 348] Q. Was it the same day you gave the statement?

A. I am not sure—I am sure it was not that day, but I am not sure which day it was.

Q. Do you remember testifying last Friday?

A. I think I do.

Q. Remember saying then that you were taken down to your home the evening after you made the statement?

A. I do not remember making that statement.

Q. Don't you remember saying that?

A. No. I said it could have been a day or so afterwards, I said.

Q. You say that day?

A. I said that to you Friday.

Q. Are you sure?

A. I know what I said. I am positive I said that.

Q. Now which was it? When did the police take you back to your home?

A. I just said I don't know exactly when.

Q. When you signed the statement was early Sunday morning, about 5:30, was it?

A. No.

Q. Saturday morning?

A. That's right.

Q. I beg your pardon. Then when were you taken to the county jail?

[fol. 349] A. It was either on Tuesday or Wednesday. I am not sure.

Q. Can't you remember yet the day the police took you back to your house?

A. There was no calendar in there.

Q. You would know if it was the following day, or two days later.

A. I don't know exactly. I was laying up there more dead than alive, back in that back cell. There was no daylight coming in there nowhere.

Q. After you got back to the house, strike that, please. How many officers took you back to the house?

A. There were two car loads took me back there, too.

Q. After you got back to the house, what did you show to the officers?

A. What did I show them?

Q. Yes.

A. I don't think I showed them anything.

Q. What did you go to the house for?

A. They said they were going to see the trunk.

Q. Did you show them the trunk?

A. No, they went into the bathroom themselves and looked at it. I did not show them.

Q. Did you show them anything?

A. I did not.

Q. You just stood there and said nothing?

A. That's right.

[fol. 350] Q. Did you do anything?

A. No.

Q. Who was at your home when the officers brought you back there?

A. I believe the landlord, and that's about all.

Q. Who is the landlord?

A. William Mack.

Q. William Mack. Was your mother there?

A. I don't think so.

Q. Were you taken back to your house before your mother saw you in the jail?

A. She did not see me in the jail.

Q. Were you taken to the house before you got any other clothes?

A. No. It was after I got clothes.

Q. When did you get other clothes?

A. I don't know when they were sent, but she brought some up and took the others back.

Q. Who asked your mother to bring the clothes up?

A. How do I know. I did not. They would not let me call her or anything.

Q. But she brought the clothes up? What did she bring?

A. She brought me pants, shirt and sweater.

Q. Pants, a shirt and a sweater?

A. And some soap and washrag.

Q. And you had not called her to bring them up?

[fol. 351] A. Any mother would try to do something for her child when he needs help.

Q. That's right.

A. Sure, if she knew I was in trouble or in pain, she will try to do her best to help him out. And she knew I did not have any change of clothes there, no suitcase.

Q. And you were in the jail there with this soiled shirt and these torn pants, were you?

A. Yes sir.

Q. And when your mother brought this other shirt and these other pants up, she turned them over to the police?

A. They got them.

Q. Did an officer bring these clothes back to you in the cell? In a handbag?

A. They were put in a handbag. They brought them to me.

Q. Did the officer say what they were?

A. He said here is something for you.

Q. What did you do? Put the clothes on? First what did you do with the ones you had on then?

A. I rolled them up and put them in the bag and they took them away.

Q. What did you tell the officers?

A. Did not tell them anything.

Q. Did you say anything to your mother?

[fol. 352] A. I did not know who brought them up there.

Q. After you took your shirt off and put on the new one, did you give the others to the officer to give to your mother?

A. I did not say who to give them to.

Q. What did the officers do with them?

A. They took them out back. I don't know what they did with them. I could not see out there.

Q. Then I understand when this package was brought to you, there was nothing said to you by the officer who brought them to you.

A. I said that he said, Here is something for you. That's all.

Q. And when you gave the package of old clothes back to him, you said nothing to him?

A. No. I wasn't exactly feeling too good. I was mad at the whole world at the time.

Q. Your mother brought up the shirt, pants and what else?

A. A number of little articles like a wash cloth, soap, and lots of things like that.

Q. Do you remember when a couple of officers came out to the county jail to see you?

A. Yes.

Q. Do you remember what those officers had with them?

A. They had that blue coat and green cap.

Q. What did you tell the officers?

[fol. 353] A. They tried to make me say I had committed lots of burglaries. That's what they came out for.

Q. Did you say anything to the officers about this cap and coat?

A. They came out and showed it to me and asked if it was mine. I said it was.

Q. Did he say that that was what you were wearing on the night of this killing?

A. He did not say anything like that.

A. He did not say that?

A. He did not. They asked if those were my clothes,—my coat and hat and I said no.

Q. Did they ask whether you were wearing this hat and coat on the night of the killing?

A. No, they did not ask me that. I just finished answering that.

I believe that is all.

Redirect examination.

By Mr. Mills:

Q. Take your coat off, John, and put this one on.

Witness did so. (Too small)

Q. Now put this cap on.

Witness put on cap. (Too small)

Q. Is that the way you were dressed on Oct. 14th?

A. No.

Mr. Rogers: Just a minute.

[fol. 354] Recross-examination.

By Mr. Rossetti:

Q. John, just a minute. That coat and the hat are both yours?

A. Yes, they are mine all right.

.

Thereupon court recessed for the noon luncheon and until one o'clock today.

1 P. M.

Court: Are you ready to proceed?

Mr. Mills: Mr. Contie, our witness, is not yet back from Chicago. They will not stipulate on the matter, so in that case defendant rests.

[fol. 355]

REBUTTAL

Thereupon the State, to rebut the evidence produced by the defendant, called the following witness and offered the following evidence, to wit:

RALPH SPENCER, recalled by the State, and having been sworn by the court earlier in this trial, testified as follows:

Direct examination.

By Mr. Rogers:

Q. I think you testified yesterday, did you, Mr. Spencer?

A. Yes sir.

Q. I hand you herewith a photograph marked for identification as State's Exhibit E. Did you take that picture?

A. I did.

Q. Is that photograph a true representation of what you took?

A. It is.

We offer it in evidence.

Object.

Objection sustained.

State excepts, to refusal of Court to admit Ex. E.

Mr. Rogers: Well, we withdraw the photograph and withdraw the question.

Court: Then the ruling is of no avail.

Q. When you took this photograph, Mr. Spencer, you took it in the police department, did you?

Object. No question about that.

Mr. Rogers: I might say to the court this photograph is being introduced in rebuttal.

[fol. 356] Court: The court has not admitted it.

Mr. Rogers: I am asking to have it admitted in rebuttal.

Court: No, if it was competent at all, it could have been made competent on cross examination with the defendant.

Mr. Rogers: The Court said the other day it could not be admitted except on rebuttal. This court said it could be admitted in rebuttal.

Court: This court said at that time, but the defendant himself changed the situation here.

Mr. Rogers: We offer it in rebuttal as to the condition of his clothing.

Court: Objection sustained. It is refused. I will have the jury withdrawn for you to argue this matter if you wish. The jury will withdraw.

(Jury now out of courtroom.)

Mr. Rogers: We still offer that photograph.

Court: It is refused. Court thinks he is doing the State a favor by keeping that photograph out.

Mr. Rogers: Doing the State a favor?

Mr. Rossetti: Is that in the record, Miss Bowman? The State excepts to the court's refusal to admit the photograph.

Thereupon the jury was returned to the courtroom and to the jury box.

[fol. 357] Mr. Jones & Mr. Rogers: It is. That's right.

DEFENDANT'S MOTION FOR DIRECTED VERDICT RENEWED AS FOLLOWS:

Mr. Jones: Now comes the defendant at the close of all the evidence in the case, the State having finally closed its

case, and moves the court to direct a verdict in favor of the defendant in this case for the following reasons:

1. The State has failed to prove the essential elements, essential allegations of the indictment.
2. The State has failed to prove the corpus delicti.
3. The State has failed to prove any criminal agency.
4. The State has failed to prove any intentional killing.
5. The State has failed to prove any unlawful killing.

[fols. 357-419] 6. The State has failed to prove by any competent evidence any criminal act on the part of the defendant.

Court: Motion is overruled.

Defendant excepts.

[fol. 420]

1:25 P. M., April 3, 1946

CHARGE TO JURY

Thereupon the arguments of counsel to the Court and Jury having been concluded the Court charged the jury on the issues joined as follows:

Ladies and Gentlemen of the Jury:

The trial judge desires to impress you firmly with a proper sense of responsibility which you the jury in this case owe your consciences, society and the parties, to the end that your verdict, when returned, be intelligent, honest and in conformity to both the evidence adduced and the law the judge gives you in these instructions. You have heard all the evidence, the arguments of counsel in summing up same. Before submitting the case to you for consideration and determination it remains for the trial judge to instruct you concerning the law that is to govern you in arriving at your verdict.

In the trial of cases of this sort the court consists of two branches, the trial judge and the jury. The law of the case is within the province of the judge. He has the duty of determining the law of the case, including the decisions as to what evidence or proof may or may not be admitted in

evidence. During the course of the trial counsel have at times objected to certain questions put to witnesses and to the admission of certain evidence offered. Some of these objections have been sustained. Others have been overruled. You must not draw any inference in favor of [fol. 421] or against either side of the case by reason of what counsel or the trial judge said in connection with the argument of or the decision of said objections. You are under obligation to accept and utilize as the law of this case the instructions given you by the trial judge as such, regardless of what your personal notion of the law is, should your notion in any particular differ from the law given by the judge. Should the judge, during the trial, have said or done anything you construed as an indication of his opinion as to whether your verdict should be favorable to one side of the case or to the other, or what your finding on a question or issue of fact should be, you must not permit yourself to be influenced thereby, as the judge did not intend to attempt to influence you on matters coming within the jury's province.

Just as the law is within the province of the judge, so are the facts and questions and issues of fact within the province of the jury. Your conclusions, however, must be based upon and determined from the evidence admitted in the case. Should any evidence have been given by a witness which was later stricken from the record by the judge's ruling, you must not consider it as evidence. The evidence consists of the testimony given by the witnesses and the [fol. 422] exhibits the judge admitted in evidence. The opening statements of counsel are not evidence. Their purpose as a part of the trial was explained at the time they were made. The arguments of counsel in summing up the evidence are not evidence. The purpose of these arguments is to aid the jury in arriving at a correct solution of the questions to be decided. The legitimate scope of arguments by counsel is confined to the evidence and to reasonable inferences that may be drawn from the evidence.

You should carefully consider and analyze the assertions made by counsel in their arguments and determine what basis or foundation said assertions have in the evidence. You, the jury, are the sole judges of the credibility, that is the believability, of the witnesses who testified, and the weight you should attach to the testimony given by each witness. You may consider feeling, prejudice, bias or

interest in the outcome of the case shown by or in connection with each witness, insofar as you find, if at all, same has influenced his testimony. Also the reasonableness or unreasonableness of testimony given may be considered by you. Whether testimony given is contradicted or corroborated by other testimony; the opportunity the witness had to know about the matters concerning which he testified. You are at liberty to believe or disbelieve all or any [fol. 423] part only of the testimony given by a witness, depending, of course, on whether you find same to be accurate, reliable and trustworthy or otherwise. Your aim should be to determine from the evidence just where the truth lies as to each and every question of fact involved in the case. You should give due consideration to all the evidence admitted, considering all of same impartially, fairly and rationally, attaching to each item thereof just such weight to which you find it entitled, in order that you may accomplish the purpose for which you have been solemnly selected and sworn, namely doing justice between the State of Ohio on the one hand and the defendant, John Harvey Haley on the other hand.

In criminal cases the evidence may be either direct or circumstantial or both. If a witness sees, knows and testifies to the commission of the ultimate fact to be proved, that is direct evidence, or probative evidence as it is sometimes called. Circumstantial evidence is proof of facts standing or existing in such relation to the ultimate fact or facts to be proved that such other fact or facts to be proved may be inferred or deduced from said surrounding fact or facts.

[fol. 424] This case is a criminal case as distinguished from a civil action. The plaintiff is the State of Ohio, occasionally referred to as the State. The defendant is John Harvey Haley, who has been spoken of as the accused. William Karam, alleged in the indictment as having been killed, has been referred to as the deceased. The State of Ohio in this case claims that on the evening and night in question, the defendant and two other persons, Willie Lowder and Alfred Parks, met and formulated a plan and design to commit a robbery, that they obtained a revolver and bullets or cartridges, loading said revolver with said cartridges for the purpose of having same for use in connection with the perpetration of a contemplated robbery and the carrying out and perpetration of said design and

plan. And that defendant and said two other persons approached the confectionery and store of one William Karam located in Canton, Stark County, Ohio, where arrangements were made by and between said three persons that defendant Haley was to remain outside said store building, keeping watch for persons who might approach; and said Lowder and Parks were to go inside said building for the purpose of completing the commission of said contemplated robbery; that thereupon said Haley did remain out-[fol. 425] side said building and said Lowder and Parks did enter said building, each for the aforesaid purpose and in connection therewith, and while said three persons were attempting to perpetrate said contemplated robbery, they unlawfully and purposely shot and killed said Karam, then and there being. The defendant Haley denies all material allegations of the indictment herein and further denies the said claims made by the State, and denies that he had any part in formulating a plan or design to rob, and denies he participated in any capacity, to rob or attempt to rob said William Karam. And further said defendant claims and contends that at the time and place in question he was entirely without information or knowledge that his said associates and companions entered the Karam store for the purpose of robbery or for the purpose of attempting to rob.

In Ohio all crimes are made such by virtue of statutes enacted by the legislature. Section 12,400 General Code is such a statute, which, so far as it is applicable to this case is in substance as follows:

Whoever, purposely and . . . in perpetrating or attempting to perpetrate . . . robbery . . . kills another is guilty of murder in the first degree and shall be punished by death unless the jury trying the accused recommends mercy in which case the punishment shall be imprisonment in the penitentiary during life.

[fol. 426] Due to the language of this statute and the averments of the indictment, by virtue of which the accused is on trial, which indictment will be explained a little later, our statute defining robbery, Section 12,432 G. C. must be and is given to you. It in effect is:

Whoever by force or violence or by putting in fear steals and takes from the person of another anything of value is guilty of robbery.

The expression "takes and steals from the person of another," as used in the statute just given you, in law includes, also, "steals and takes from that other's presence anything under his immediate control." To constitute robbery there must be a criminal intent and a taking and stealing of property of some value from the person of another or which is in his presence and under his immediate control with the intent to steal and rob. And the property must be so taken by force or violence or by putting in fear. Due to the averments of the indictment with which you are concerned, you are instructed that an attempt to perpetrate a robbery exists when one assaults, or directs violence upon another, with the intent to commit a robbery on the person so assaulted. An attempt to commit a given offense, also, has been defined to consist of an intent to do the crime, coupled with a positive, overt act or acts toward [fol. 427] or in furtherance of, its commission; falling short of commission of the intended crime.

The disputes or issues of fact in this case are presented by a paper or document called the indictment and the defendant's plea thereto to the effect that he is not guilty of the commission of crime charged in the indictment. The indictment here involved charges the defendant with the commission of the crime of murder in the first degree.

The substance of the indictment upon which this trial is predicated, omitting formal parts, in effect, is as follows:

That John Harry Haley late of said county, meaning Stark County, Ohio, on or about October 14, 1945, at said county, did unlawfully, purposely and while attempting to perpetrate robbery, kill one William Karam, then and there being, contrary to the statute, and against the peace and dignity of the State of Ohio.

Certain words used in the indictment and in these instructions are defined and explained. Unlawfully means contrary to, and in violation of law, contrary to, and in violation of statute. Purposely means intentionally, not accidentally or by chance. To do an act purposely means to do it voluntarily and wilfully.

[fol. 428] As the State contends and claims that the defendant Haley, in addition to entering into the formulation of and the making of a plan and design to commit robbery, also, actually, in person, participated as a principal; or at any rate, as an aider and abettor, in the alleged attempt

to perpetrate said planned robbery on said William Karam, the trial judge feels called upon to give you a further statute and explain what is meant by the words aider and abettor. Section 12,380 G. C. is in effect as follows:

Whoever aids or abets or procures another to commit an offense may be prosecuted and punished as if he were the principal offender.

The jury is advised the word aid, as in the statute used, means to help or assist in a criminal act. The word abet means to encourage, counsel, incite or assist in a criminal act. In general a person is regarded as principal who performs the criminal act in question while one who voluntarily acts in concert with him with the intent and purpose to aid in the performance of the criminal act and the commission of the offense, is an aider and abettor.

You are instructed under the law the defendant having pleaded not guilty to the indictment, he is presumed to be innocent. This presumption of innocence exists and continues throughout the trial and throughout your consideration of, and deliberation on, the case. The returning of the indictment by the grand jury is merely the method provided by law for the presentation of the formal charge against the accused. Its return does not raise any presumption of defendant's guilt of the commission of the crime. The indictment furnishes no evidence of defendant's guilt. You will have the indictment during your deliberations for the purpose of refreshing your memories as to the charge made against the defendant. It serves no other or further purpose. The effect of this presumption of innocence referred to, is to put upon the State the burden of proving beyond a reasonable doubt that the accused defendant is guilty of having committed the crime charged, that is, of proving beyond reasonable doubt each and every material element of such crime. In case of a reasonable doubt as to whether defendant's guilt has been so established by proof, he should be acquitted.

Now, just what is meant by the term "by proof beyond a reasonable doubt"? Our state legislature has defined that term for us, which definition you will utilize in your consideration of this case. The definition is, in substance, this:

[fol. 430] It, meaning reasonable doubt, is not a mere possible doubt, because everything relating to human

affairs or depending upon moral evidence is open to some possible or imaginary doubt. It, meaning reasonable doubt, is that state of the case which, after the entire comparison and consideration of all the evidence, leaves the minds of the jurors in that condition that they can not say they feel an abiding conviction to a moral certainty of the truth of the charge.

Further, by reason of admonition of statute, you are instructed as I earlier indicated, that the jury is the exclusive judge of all the questions of fact involved in the case.

As earlier fully explained to you, the view of the premises you had is not evidence. It must not be considered by you as being evidence. Its sole purpose is the one I explained at the time the view was had.

You will recall that I have heretofore said to you that, in general, the judge determines the admissibility of evidence. But, you will recall I think that on Monday just before certain alleged statements or declarations claimed by the State to have been made by the defendant, in part oral and in part consisting of an alleged written or typed statement or declaration, identified as State's Exhibit D, [fol. 431] were by the judge permitted to be introduced with the instruction that you the jury would in the end and finally, determine first, whether the defendant made said statements and declarations; and if he did make it, whether they were made by the defendant voluntarily and of his own free will; and further in the event you should find he did make them and made them voluntarily and of his free will, just what weight, if any, should be accorded them.

I now again direct your attention to that evidence. The State claims the defendant made said statements and declarations and that he made them voluntarily and of his own free will. The defendant denies the State's said claims and asserts they were not made voluntarily and of free will. You will decide these questions from all the evidence in the case. Should you find from all the evidence that the defendant did not make them, or if he made them that he did not make them voluntarily and of his free will, you will in that event disregard them entirely and not consider them further. On the other hand, should you find defendant did make them and that he made them voluntarily and of his own free will, you will consider them as evidence and

give them just such weight to which you find from all the evidence they are entitled. Should you find from the evidence that some of them were made by the defendant and by him made voluntarily and of his free will, and find others [fol. 432] were not made by him, or if made by him, not made by him voluntarily and of his free will, you will consider only those you find were made by him voluntarily and of his free will and reject the others. You will consider the alleged oral statements or declarations, separate and apart from the said written or typed statements, and the circumstances incident to each.

You are instructed further that statements of guilt or declarations of guilt as they are sometimes called, made through the influence of hopes or fears, statements or declarations induced by promises of temporal benefit or threats of disadvantage, are to be weighed and not to be considered of any value. Statements and declarations which are not voluntary and of free will made, are excluded on the ground that they are probably not true. Another ground for the exclusion is that it is a violation of the constitutional provision that no man shall be required to give evidence against himself, for if he is compelled by threats or induced by hopes to make confession against himself, it is an indirect method of compelling him to give evidence against himself, when statements or declarations made under such circumstances are afterwards proven against him in court. On the other hand, a free will and voluntary statement or admission, made by a defendant against his interest, *against his interest*, is one of the most satisfactory proofs of guilt, for an innocent person will not voluntarily subject himself to infamy and liability to punishment by false statements against himself.

[fol. 433] The State having offered these statements or admissions, must prove that they were made; but the burden of proving that a particular statement or admission was obtained by improper inducements, in general, is upon the defendant.

However, if representations or threats were made by or in the presence of a person having authority or control over the prosecution, or the accused, it is to be presumed that the statement or declaration, was produced by such representations or threats, unless it appears that their influence was totally done away with, before the statement or declaration was made. And, further, you are advised

the character of statements and admissions, sometimes referred to as confessions, is not determined by a denial or an abuse of the defendant's right, but by the effect upon him of such acts.

There are some questions of fact that it will be well for you to consider carefully in connection with reaching your verdict. Among these are:

1. If a crime was committed, was it committed in Stark County, Ohio, as this court's jurisdiction is limited to this county.

2. Did the three persons, the defendant Haley, and Lowder and Parks, as claimed by the State, meet and make and formulate a plan and design in connection with which they intended to perpetrate a robbery, or did they not do so?

[fol. 434] 3. Did said three persons, in furtherance of said plan or design and in an attempt at the time and place in question, to carry out said plan and design, attempt to perpetrate a robbery, or did they not?

4. Did said John H. Haley, the defendant in this case, at the time and place in question, know that his said associates and companions were perpetrating, or attempting to perpetrate a robbery, or did he not so know?

5. Did said defendant, John H. Haley, at the time and place in question, knowingly participate with his said associates and companions, either as a principal or as an aider and abettor, in attempting to perpetrate a robbery, or did he not?

While earlier I stated that the word purposely used in the indictment and in the statute under which this prosecution is had, in effect, means intentionally and not by chance, I add to that explanation that it imports an act of the will, intentional design to do an act. Ordinarily a purpose to kill is to be gathered from the circumstances under which the killing is done. The purpose or intention of the party or parties is a question of fact to be determined by you from all the circumstances and facts of the case, as disclosed by the evidence.

As a matter of law, one who knowingly and voluntarily participates in the perpetration of a robbery, with others,—that is to say one who voluntarily and knowingly or [fol. 435] wilfully joins with others in the furtherance of a

common design or plan, or a common purpose to rob, is guilty of the robbery, if one is committed, no matter what his part in the actual consummation of the robbery is. It is a general principle, you may apply in your deliberations, that what a man does wilfully he intends to do, and intends the natural and probable consequences of his voluntary acts, unless the circumstances are such as to indicate the absence of such intent.

In this case one witness, ordinarily referred to as an expert witness, has testified. An expert witness is generally regarded as one who is skilled or has made especial study of some subject matter, from which it may be presumed that he knows more about a subject than the ordinary person, or the ordinary juror. They are permitted to give answers and testimony in the nature of opinions which ordinarily, with the ordinary lay witness, in the ordinary case, will not be permitted. You will recall this witness did give some opinions. Now it is for the jury to say just what weight you will give to an expert's testimony, including the opinions expressed by him. Testimony of that kind should be considered by the jury but the weight that is to be attached to it is within the jury's exclusive province. In considering expert testimony it should be taken into consideration, in connection with all the other testimony in the case, and given just such weight as the jury in its sound [fol. 436] judgment finds it is entitled to.

The court heretofore has indicated to you the claims and contentions made in this case by the State and by the defendant. One of the claims is in substance that he, the defendant, at no time, had any part in formulating a plan or design to perpetrate or commit a robbery, and that he at no time participated knowingly in a robbery or in an attempt to perpetrate a robbery at all in connection with Will Karam's store or confectionery or upon said William Karam, or elsewhere, claiming further,—defendant claiming further that his companions and associates, Willie Lowder and Alfred Parks, entered said confectionery or store without the defendant having any knowledge whatever as to their purpose and without the defendant Haley knowing they had any purpose in mind to perpetrate robbery or any evil purpose or design in entering said confectionery or store. Should you find defendant's said claim to be true, he of course is not guilty of having committed the offense with which he is charged, or of having participated in the

commission of that offense. That of course is a question of fact to be decided by you from the evidence in the case. But should you not find defendant's said claim in this particular to be true, then you will have a number of other propositions to consider and determine. One proposition is whether or not on or about October 14, 1945, the William [fol. 437] Karam named in the indictment was unlawfully shot and killed in his store or confectionery located in Stark County, Canton, Ohio. Another, Number Two, would be whether or not on said date and at said place, the defendant Haley, together and jointly with his companions Lowder and Parks, approached said store and confectionery of said Karam, all three at said time and with a common intent and purpose of perpetrating a robbery, the part of each being arranged earlier by said three associates and confederates, to wit, that defendant Haley would remain outside said building to watch for persons who might approach; said Lowder and Parks would enter said confectionery and complete the common purpose of perpetrating the contemplated robbery.

Another, Number Three, whether or not in furtherance of said common plan and in conformity to it, each at the time, with the intent and purpose aforesaid, said defendant did remain outside said confectionery, said Lowder and Parks did enter same, all attempting to perpetrate robbery of said Karam, and that while so doing, in the furtherance of said common plan to rob, said Lowder and Parks, or one of them, did unlawfully and purposely shoot and kill said Karam, all of said associates and confederates being at the time engaged in the perpetration of a robbery, attempting to rob said William Karam, all in conformity to and in furtherance of said pre-arranged or common plan and design.

[fol. 438] Number Four. Whether or not the defendant and his two associates and confederates at the time said Karam was shot and killed, as aforesaid, were jointly participating in an attempt to rob and that said shooting and killing of said Karam was a result and consequence in furtherance of the said common purpose and design of said three confederates, and further also that said shooting and killing of said Karam was a natural and probable consequence of said common purpose of said three confederates to perpetrate a robbery, as aforesaid.

In the event you should find from the evidence, beyond reasonable doubt, that said evidence establishes and proves the affirmative of each and all of said four propositions just given you by the degree of proof heretofore indicated, then your verdict should be in effect that the defendant is guilty of murder in the first degree, with or without mercy as you shall determine. Otherwise, your verdict should be not guilty.

But three verdict forms will be given you in this case. One will be a verdict which in substance will say that We do find the defendant Haley guilty of first degree murder as charged. That is one. That one will end there. Another will be quite similar to the first, and will be that we do find the defendant guilty as charged, and added to it will be [fol. 439] "but we recommend mercy". Or that we recommend mercy, one or the other. The third verdict will be that we do find the defendant not guilty. One of these two first degree murder verdicts, as I have indicated will be furnished you, will embody a recommendation of mercy. Should you reach a conclusion that the evidence, in the light of the law, proves the defendant is guilty of the crime of murder in the first degree,—but not otherwise,—you will have the further duty of determining whether to recommend mercy or not. Whether to recommend mercy or not, is a question for you to decide and determine from the evidence in the case, in the light of all the surrounding circumstances.

As has been indicated, our statute defining murder in the first degree, provides that when a defendant is found guilty of murder in the first degree, unless a recommendation of mercy is made by the jury, his punishment shall be death. It also provides that if and when a recommendation of mercy is made by the jury, the punishment shall be imprisonment in the penitentiary for life.

When you have arrived at a verdict, you will select whichever of these three forms gives true expression to the conclusion you have reached. Fill in all the blank spaces accurately and properly. Your foreman or forelady only will sign the verdict, for in criminal cases only the foreman or forelady signs. That person signs for all of you and the [fol. 440] foreman or forelady is not justified or entitled to sign a verdict in the trial of a criminal case unless and until all twelve jurors are in agreement.

Now, it has been found in the deliberations of juries that better results are obtained by having a foreman or forelady to preside over your deliberations. While you would have to have one before your verdict could be completed and returned, it is suggested you make this selection immediately upon your retirement, so that you will have a presiding officer. I think you will proceed in more orderly fashion in that way.

Now, during your deliberations you will have the original indictment to be used for the purposes I indicated. You will have the exhibits that were permitted to come into this case, to examine. You will have the verdict forms. The exhibits are testimony. But for the oral testimony of the witnesses you will have to rely on your memories. For the court's charge you will have to rely on your memories. I think I have covered the issues in this case. However, while the jury remains in the box, the court may have omitted something the lawyers think should be included, or made some slip of the tongue, and so the court will now pause a moment to give counsel on either side opportunity to call the court's attention to it, out of hearing of the jury.

[fol. 441] The State has no objection to the charge, but thinks the court overlooked the disposition of the 13th juror.

SPECIAL REQUESTED CHARGES

Court: There have been some propositions handed to the court which he is asked to give to the jury. Even after argument, it is the practice for judges to give requests if it is thought they are correct. However, I think all of these have been touched on in some form or other. Previous to giving what I intend to give, however, I want to give you this caution, that by giving these to you now, the court does not mean to give anything he has given heretofore, any additional emphasis. These are in a little different form. I will read them to you.

State Objects to all three of them. Don't think they state the . . . And Object Particularly to No. 2, and particularly to the word "acquiesced."

Court: The Court gives you some of these. This is not for emphasis, but adding to the general charge. If you have the slightest reasonable doubt that William Karam [fol. 442] was killed by Lowder or Parks while perpetrating

or attempting to perpetrate a robbery, it is your duty to find the defendant not guilty.

No. 4. If you have the slightest reasonable doubt that defendant knew that Lowder and Parks entered the store for the purpose of committing a robbery—this last one—in connection with this definition which the court in his charge has tried to make clear to the jury,—that mere standing idly by on the part of one person, without doing any overt act or doing anything affirmatively in the way of an assistance, that that does not constitute participation. I take it that what you wanted said is that before one becomes either a principal or an aider or abettor in the commission of any crime, he must perform some overt act and do something where the prosecution is based on actual participation. There is no claim being made in this case of conspiracy. I am not charging it on that ground. I think that clears it up, if you will remember the charge. At one place I think I covered that fully. The other two I think might be misleading. Now will counsel come to the bench?

.

[fol. 443] Court: If there is nothing further you may preserve your exceptions. Mr. Baliff, take the jury to their jury room.

Mr. Jones: Now comes defendant and affirmatively requests the court to give the following charge to the jury:

Before you can find defendant guilty of any crime, you must find beyond the existence of a reasonable doubt that he knew that Lowder and Parks entered the store for the purpose of committing a robbery, and that he acquiesced therein, and before you can find the defendant guilty of any crime, you must further find beyond the existence of a reasonable doubt that William Karam was killed by Lowder or Parks while perpetrating or attempting to perpetrate a robbery.

If you have the slightest reasonable doubt that defendant knew that Lowder and Parks entered the store for the purpose of committing a robbery and that he acquiesced therein, it is your duty to find defendant not guilty. Defendant also specifically Excepts to the court's refusal to so charge the jury. Also defendant Excepts Generally to the charge and to each and every part thereof specifically.

[fol. 443-a]

III

If you have the slightest reasonable doubt that William Karam was killed by Louder or Parks while perpetrating or attempting to perpetrate a robbery, it is your duty to find defendant not guilty.

Given.

[fol. 443-b]

II

Before you can find defendant guilty of any crime, you must find beyond the existence of a reasonable doubt that he knew that Louder and Parks entered the store for the purpose of committing a robbery, and that he acquiesced therein, and before you can find the defendant guilty of any crime, you must further find beyond the existence of a reasonable doubt that William Karam was killed by Louder or Parks while perpetrating or attempting to perpetrate a robbery.

Refused.

[fols. 443-c-447]

IV

If you have the slightest reasonable doubt that defendant knew that Louder and Parks entered the store for the purpose of committing a robbery and that he acquiesced therein, it is your duty to find defendant not guilty.

Refused.

[fol. 448] IN THE COURT OF COMMON PLEAS OF STARK COUNTY

No. 13,978

THE STATE OF OHIO, Plaintiff,

VS.

JOHN H. HALEY, Defendant

HEARING ON MOTION FOR NEW TRIAL—May 15, 1946

APPEARANCES:

John Rossetti and B. Rogers, for the Office of the Prosecuting Attorney.

E. L. Mills and Edgar Jones, for Defendant.

Lucy Bowman, Official Shorthand Reporter.

Mr. Mills: If it Please the Court: Before proceeding with the argument, I have an affidavit here we wish to offer

in evidence, marked Defendant's Exhibit Y, and ask that this affidavit marked Defendant's Exhibit Y be made a part of the record.

Judge Sweitzer: There being no objection on the part of the State, it is admitted in evidence.

[fol. 449] Mr. Mills: We have asked the Prosecuting Attorney to stipulate in this case, as was done in the other cases,—one or two other cases,—that the defendant's confession was read in evidence in the Juvenile Court, and the Prosecuting Attorney not wishing to make that stipulation, we call Judge Leahy as a witness.

Thereupon JUDGE THOMAS H. LEAHY, called by the defendant, and being duly sworn by the Judge, testified as follows:

Direct examination.

By Mr. Jones:

Q. Your name is Thomas H. Leahy?

A. It is.

Q. You are Judge of what is known the Division of Domestic Relations, and Juvenile Court Judge, in the Common Pleas Courts of Stark County?

A. I am.

Q. Did you occupy that position in October of last year?

A. Yes.

Q. And continuously since that time, of course?

A. Yes sir.

Q. In October or November of 1945, was there a hearing held in your court in the case of State of Ohio vs. John H. Haley?

A. There was.

[fol. 450] Q. And you presided at that hearing?

A. That's right.

Q. Judge, will you tell the court what, if anything, was done in the course of that hearing with reference to the reading of a purported confession of John Harvey Haley, into evidence?

Mr. Rossetti: We object.

Objection overruled.

State excepts.

A. Well, at that hearing, a member of the staff of the

Prosecuting Attorney's office was present and presented the testimony. My recollection is that it was Mr. John Rossetti, and he did read what purported to be an alleged confession signed by the young man.

Q. I hand you here, Judge, a document which is not marked for identification, and ask you if you can identify it?

A. I can not identify it, because I did not read it. It was read, and I can only give my opinion after I read it over. I have some recollection of what was read from it, but I did not read it myself. The Assistant Prosecutor read it.

Q. He read it during the course of that hearing in Juvenile Court?

A. That's right. I did not have it myself.

[fol. 451] Q. Now, Judge Leahy, the document which I handed you a moment ago,—now marked Defendant's Exhibit D, I will ask you whether you can identify that now?

A. No, I can not. I did not have it in my hand. I think it was read the original confession was read by Mr. Rossetti, I think, as I remember. I would not be able to tell you if it was the same or something similar.

Q. Judge Leahy, I will ask you to read as much of this exhibit as may be necessary for you to answer the question, if you will, and ask that the court wait until he has read it.

(Witness read paper).

A. I have read it.

Q. Having read it, are you able to state whether or not this Exhibit D includes substantially the same statements as were contained in the alleged confession which was read during the hearing in your court?

Object overruled.

State excepts.

A. I believe that it does.

[fol. 452] Cross-examination.

By Mr. Rossetti:

Q. Were you within the jurisdiction of this court from the dates of April 1st to April 10th, inclusive?

A. Yes, I was.

Q. Were you available and able to testify as a witness, had you been called at that time?

A. I was.

Mr. Rossetti: I think that is all.

Mr. Jones: That's all. We have no further evidence, Your Honor.

Court: You may proceed and argue the case.

Thereupon counsel for the defendant and counsel for the State of Ohio argued the matter to the Court.

[fol. 453] The above report contains all the evidence introduced and proceedings had in the trial of the case, given in the order as herein appears, and at the time as herein stated, as shown by the stenographic notes taken on the trial.

Lucy Bowman, Official Shorthand Reporter.

ORDER SETTLING BILL OF EXCEPTIONS

The above stenographer's report contains all the evidence offered by either party and by both parties, in the trial of the case, together with the exceptions to the introduction or exclusion of evidence taken during the trial and at the time the evidence was being introduced, as shown by said report, and also the exceptions to the charge of the Court as given.

And the jury having found and returned a verdict in favor of the State of Ohio herein, the defendant within 3 days made and filed his motion for a new trial, which motion for a new trial was, after an oral hearing and careful consideration, overruled by the court, to which ruling of the court the defendant at the time excepted, as appears of record in this case.

And the defendant having prepared this bill of exceptions herein, filed the same in this case, on the 22 day of June, A. D. 1946, and notice of filing this bill of exceptions was on the 22 day of June, A. D. 1946, given by the Clerk to the Office of the Prosecuting Attorney, counsel for the State of Ohio in this case; and this bill of exceptions was on the 2 day of July, A. D. 1946, received by the undersigned, Hon. Frank N. Sweitzer, Trial Judge; and on the 2 day of July, A. D. 1946, this bill of exceptions was allowed, corrected, signed and sealed by the undersigned

Trial Judge, and transmitted to the office of said Clerk of the Court of Common Pleas of Stark County.

Frank N. Sweitzer, Trial Judge.

[fol.454] IN COURT OF COMMON PLEAS OF STARK COUNTY

STIPULATION RE EXHIBITS

It is stipulated that the exhibits, being for the most part, too large to be enclosed with this bill of exceptions, may be kept apart, and considered the same as of attached to and enclosed with this bill of exceptions.

It is further specified by the Court that all exhibits be held until such time as the Court of Appeals hears a review of the case, when all exhibits shall be turned over to the Judges of the Court of Appeals for consideration in connection with the bill of exceptions. Some of these exhibits submitted in case State of Ohio vs. Willie Lowder; also Alfred Parks.

State's Ex. A—porkpie hat—refused admission.

B—shell jacket—admitted.

C—bullet—admitted.

D—confession—admitted.

E—picture of defendant—refused.

F—coat—admitted.

G—cap—admitted.

H—gun—admitted.

I—photograph of FBI witness of bullets, etc, etc.

Deft's Ex. 1—Shirt, (torn).

2—Trousers.

3 &

4—Bullets.

Deft's Ex. Y—introduced on hearing on motion for new trial.

[fol. 455] IN THE COURT OF APPEALS FOR STARK COUNTY,
STATE OF OHIO

Appeal—Law

Docket No. 24—Page 13978

STATE OF OHIO, Plaintiff-Appellee,

vs.

JOHN HARRY HALEY, Defendant-Appellant

DOCKET AND JOURNAL ENTRIES

1946 June 22. Transcript of the Record and Original Papers from the Common Pleas Court filed.

1946 June 22. Three (3) Assignments of Error and Briefs filed.

1946 June 22. Acknowledgement of Service filed.

1946 July 2. Bill of Exceptions filed.

1946 Sept. 23. Brief of Plaintiff-Appellee, State of Ohio filed.

1946. Oct. 25. (Journal Entry F-536) This day this cause came on to be heard on the appeal of the defendant on the questions of law and the arguments of counsel.

After due consideration thereof, the Court hereby finds that there is no error apparent on the face of the record and the judgment of the Court of Common Pleas is, therefore, affirmed with exceptions to the defendant-appellant.

Approved.

W. Bernard Rodgers, Counsel for Plaintiff-Appellee.
Amerman Mills Mills Jones & Mansfield, Counsel for
defendant-Appellant.

1946 Nov. 8. Notice of Appeal filed.

1946. Nov. 8. Praecipe for Transcript filed.

[fol. 456] Clerk's certificate to foregoing paper omitted in printing.

[fol. 457] IN THE COURT OF APPEALS FOR STARK COUNTY
STATE OF OHIO

Judges: Hon. Clyde C. Sherick, P.J., Hon. Robert B. Putnam, Hon. Charles W. Montgomery.

No. 2233

STATE OF OHIO, Appellee,

vs.

JOHN HARVEY HALEY, et al, Appellant

APPEARANCES:

D. Deane McLaughlin, Prosecuting Attorney, W. Bernard Rodgers and John Rossetti, Assistant Prosecuting Attorneys, for Appellee.
Amerman, Mills, Mills, Jones and Mansfield, for Appellant Haley.

OPINION—October 9, 1946

MONTGOMERY, J.

The three appellants were; by separate indictments, charged with the killing of one William Karam, while attempting to perpetrate a robbery, under the provisions of section 12400, General Code of Ohio. Lowder and Haley were tried before Juries. Parks, waiving that right, was tried before three judges. Each of the accused was convicted of murder in the first degree, with recommendation of mercy, and sentenced accordingly. From the several judgments, these three appeals were perfected.

Not the least of our tasks has been the reading of the three records, two of which were voluminous. They have been read, and read with care, because of the necessity of having in our minds the facts proven in each case, and the danger of confusion lest an essential matter appear in one case, and perhaps not in another.

Except for the nature of the cases and their importance, we might well content ourselves with, and adopt as our own, the opinion rendered by Judge Barthelmeh in the Parks case, and the opinion of Judge Swietzer in overruling the motions for new trials in the three cases.

[fol. 458] There are numerous assignments of error in each case. While in the several cases they vary in form and in language, they are in substance essentially the same, and may be considered and discussed together, and all have been considered. Some of them have no merit in them, and some but repeat in different form the basic matters of which complaint is made.

Especially in the Haley case, and to a lesser extent in the other cases, much is made of the complaint of misconduct on the part of counsel representing the prosecution. Some of the criticized statements of counsel were provoked or produced by preceding statements of counsel for defense. But in none of the proffered charges against counsel do we find anything prejudicial, or in fact anything deserving criticism.

If the corpus delicti were proven in each case, and if the several confessions were admitted in evidence properly, the verdicts in the two cases, and the finding in the third case, were not manifestly against the weight of the evidence.

And assuming for the moment that we should hold for the State on these two propositions, there was nothing erroneous in the charges given to the jury in the two cases. There is no requirement that the trial judge shall give to the jury in a criminal case special requests. In these cases, in view of the evidence, he properly declined to charge on other offenses.

See *Malone vs. The State of Ohio*, 130 O. S., 443.

We have, therefore, in each of these cases, essentially two questions to consider:

1. Was there in each of them, independent of the admitted confession, adequate proof of the crime, of the corpus delicti?

2. Were the confessions, obtained as they were, admissible in evidence?

The defendants Lowder and Haley in their several trials testified in their own behalf. The defendant Parks testified only as to the circumstances surrounding his confession. But police officers testified as to his verbal admissions. [fol. 459] We endeavor to indicate in each case anything that may be lacking in the chain of evidence. To a considerable extent the proof of the corpus delicti is cir-

cumstantial. But, as has been aptly stated, "circumstances do not lie."

Here is the chain: These three minor boys together on the eve of the crime discussed the possibility of easy money, and what could be done with a gun. They went to the home of Haley who produced the gun. It was loaded and had a safety device.

These boys roamed about the streets of Canton until nearly midnight, when coming before the business place of Karam, they concluded on trying it as the place for their operations. During their peregrinations, the gun was transferred from Haley to one of the other appellants. And here is a strange divergence in statements. While there is a similarity in other respects in the confessions, and in the oral evidence at the trials of the defendants Lowder and Parks, each places the gun in the possession of the other at the time of the shooting.

Lowder and Parks entered the Karam room. Haley remained on the outside as a "look-out." He did not know and could not know what happened in the room. He heard a shot and ran, later meeting the other two boys.

The two entered the room, announced to Karam, who was then alone, that it was a "stick-up." He, not yielding, started toward them. He was shot. The bullet traveled in an apparently straight line and entered into the apex of the heart. Blood spots were found four or five feet back from the doors from which the accused fled.

The bullet was later taken from the body of Karam. The cartridge shell was found in the storeroom near the door. After various false statements as to the whereabouts of the gun, it was found ultimately where the accused Parks stated it would be found. It was buried in a brick-yard, in a canvas bag, which bag he told the officers had been stolen in a previous burglary of The Felber Biscuit Company [fol. 460] perpetrated by these same three appellants.

The connection is complete. There is no fatal break in the chain of circumstances. And in each case the ballistic expert, the F. B. I. man in Washington, to whom went the gun, the shell, and the bullet, was clear in his conclusions. We see no occasion for questioning them. He said this "bullet was fired from this gun."

We find no difficulty in holding adequate the proof of the "body of the crime."

As to the contention that, at the time of the killing, the intention to rob had been abandoned, and that if any offense were committed, it was a lesser one, we suggest that the case of *Conrad vs. State of Ohio*, 75 O. S., 52, still is applicable.

Coming now to the confessions: In the *Lowder* and *Haley* cases it is claimed they were obtained by duress, and in the *Parks* case by promises. In his case he admits no force was used. From a study of these records we are unable to uphold either contention. In the *Lowder* and *Haley* cases, this question of the voluntary nature of the confessions was submitted to the jury, which in each case found against the accused. We are in accord with these findings.

It is urged that these confessions were not admissible in the trials in the Common Pleas Court because previously they had been used in the Juvenile Court to which these three minors had first been taken. Section 1639-30, General Code, which is a portion of the "Juvenile Code," provides in part:

"The disposition of a child under the judgment rendered or any evidence given in the court, shall not be admissible as evidence against the child in any other case or proceeding in any other court" * * *

But here there was no judgment other than the referral after hearing the evidence, and realizing the nature of the crime charged, to the Court of Common Pleas, as was the only possible course. That did not make of it "any other case or proceeding in any other court." It was the same case, the same proceeding, transferred to the proper court. [fol. 461] Finally, we come to the contention that these confessions were inadmissible, because the accused minors were not taken "immediately" before the Juvenile Court as directed by section 1639-27, General Code, and because these confessions were obtained before they were taken before the Court.

This contention is the most serious one presented to us and has given us much concern. The perplexity is due to recent decisions of the Supreme Court of the United States, which decisions were discussed at length in briefs and arguments of counsel. They are confusing, because of the con-

flicting positions taken by various Justices, because of the varying concurrences and dissents, but the fact remains that so far as the decisions are in point, they deal with federal and not state statutes.

We are content to follow the reasoning and the conclusion of the Second Appellate District of Ohio as pronounced in the case of *State of Ohio vs. Collett* reported in 58 N. E. 2nd, 417, and this is so in spite of the difference in wording of the statutes involved in that case and ours.

In the case of *Starkey vs. State of Ohio*, 4 Ohio Circuit Reports, 101, decided in 1886, with Judge Shauck, then on the Circuit Bench, rendering the opinion, it was held that a confession, voluntarily made, although before a warrant had been issued for the arrest of the accused, was admissible in evidence.

See the case of *People of the State of New York, vs. Alex.*, 96 A. L. R., 1033, and the annotations following it. The first branch of the syllabus in that case is:

“Illegal delay in arraignment after arrest, for the purpose of obtaining a confession, does not of itself render the confession inadmissible.”

This certainly is sound. One restrained of his liberty has a right to strict compliance with the laws under which he is detained, but if he voluntarily makes a confession before such compliance is had we fail to see how he is prejudiced by his own confession.

In the instant cases the guilt of these several appellants is so apparent, the care taken by the trial courts to protect them is so outstanding, the technical errors should be disregarded, and there are no prejudicial errors. Justice was [fol. 462] done and the judgments of conviction are affirmed.

Sherick, P.F., and Putnam, J., concur.

[fol. 463] Clerk's Certificate to foregoing paper omitted in printing.

[fol. 464] IN THE COURT OF APPEALS OF STARK COUNTY,
STATE OF OHIO

No. 2233

STATE OF OHIO, Plaintiff-Appellee,

vs.

JOHN HARVEY HALEY, Defendant-Appellant

JUDGMENT—Filed October 25, 1946

This day this cause came on to be heard on the appeal of the defendant on the questions of law and the arguments of counsel.

After due consideration thereof, the Court hereby finds that there is no error apparent on the face of the record, and the judgment of the Court of Common Pleas is, therefore, affirmed with exceptions to the defendant-appellant.

Approved: W. Bernard Rodgers, Counsel for Plaintiff-Appellee; Amerman, Mills, Mills, Jones & Mansfield, Counsel for Defendant-Appellant.

[fol. 465] [File endorsement omitted.]

[fol. 466] IN THE COURT OF APPEALS OF STARK COUNTY,
STATE OF OHIO

[Title omitted]

NOTICE OF APPEAL—Filed November 8, 1946

Now comes the defendant-appellant, John Harvey Haley, and gives notice of appeal to the Supreme Court of the State of Ohio from a judgment entered in this cause by the Court of Appeals of the Fifth Appellate District of Ohio on the 25th day of October, 1946, which said judgment of the Court of Appeals of the Fifth Appellate District of Ohio affirmed the judgment of the Court of Common Pleas of Stark County, Ohio, in this cause entered on the 5th day of June, 1946 overruling the motion of this defendant for a new trial, entering judgment upon the verdict of the jury rendered on the 3rd day of April, 1946, and sentencing the

defendant to imprisonment in the Ohio State Penitentiary for life.

Said appeal is taken as of right because a debatable constitutional question is involved in this cause, and said appeal is also taken subject to the allowance by the Supreme [fols. 467-470] Court of Ohio of a motion for leave to appeal.

Said appeal is on questions of law.

E. L. Mills and Edgar W. Jones of Amerman, Mills, Mills, Jones & Mansfield, Attorneys for Plaintiff-Appellant.

[fols. 471-472] IN THE SUPREME COURT OF OHIO

Appeal from the Court of Appeals of the Fifth Appellate District of Ohio

STATE OF OHIO, Plaintiff-Appellee;

vs.

JOHN HARVEY HALEY, Defendant-Appellant.

MOTION FOR LEAVE TO APPEAL—Filed November 12, 1946

Now comes John Harvey Haley, defendant-appellant herein, and moves the Court for leave to appeal on questions of law from the judgment of the Court of Appeals of the Fifth Appellate District of Ohio, rendered on October 25th, 1946, in this cause, as is more fully described in the copy of the Notice of Appeal filed herewith, for errors prejudicial to the defendant-appellant as set forth in the Brief of Defendant-Appellant filed herewith.

Signed E. L. Mills and Edgar W. Jones of Amerman, Mills, Mills, Jones and Mansfield, Attorneys for Defendant-Appellant.

[fols. 473-474] IN THE SUPREME COURT OF OHIO

[Title omitted]

MOTION TO DISMISS APPEAL AS OF RIGHT—Filed November 27, 1946

Now comes the State of Ohio, Plaintiff-Appellee, by the prosecuting Attorney D. Deane McLaughlin, and respect-

fully moves the Court to dismiss the Appeal of Right for the reason that there is no debatable constitutional question involved in said cause.

(Signed) D. Deane McLaughlin.

[fol. 475] IN THE SUPREME COURT OF OHIO

[Title omitted]

ASSIGNMENTS OF ERROR—Filed November 12, 1946

Now comes the defendant-appellant and says that the following are the assignments of error relied upon by the defendant-appellant in this appeal on questions of law from the judgment of the Court of Appeals of the Fifth Appellate District of Ohio, entered on the 25th day of October, 1946:

1. The Court of Appeals erred in affirming the judgment of the Court of Common Pleas which Court erred in failing to sustain the defendant's motion for a new trial on the ground of the misconduct of the Prosecuting Attorney in the course of the examination of witnesses.

2. The Court of Appeals erred in affirming the judgment of the Court of Common Pleas which Court erred in failing to sustain the defendant's motion for a new trial on the ground of misconduct of the Prosecuting Attorney in the course of his argument to the jury.

[fol. 476] 3. The Court of Appeals erred in affirming the judgment of the Court of Common Pleas which Court erred in failing to exclude the alleged confession of the defendant from evidence on the ground that it was not voluntary.

4. The Court of Appeals erred in affirming the judgment of the Court of Common Pleas which Court erred in failing to exclude the alleged confession of the defendant from evidence on the ground that it was obtained in violation of Sections 1639-27, 13432-3, and 13432-15 of the General Code of Ohio.

5. The Court of Appeals erred in affirming the judgment of the Court of Common Pleas which Court erred in failing to exclude the alleged confession of the defendant from evidence on the ground that it had been used in evidence in the Juvenile Court, and its admission in evidence violates Section 1639-30 of the General Code of Ohio.

6. The Court of Appeals erred in affirming the judgment of the Court of Common Pleas which Court erred in failing to exclude the alleged confession of the defendant from evidence on the ground that it was obtained and used in violation of the "Due Process" clause of the Fourteenth Amendment to the Constitution of the United States, and in violation of the Constitution of the State of Ohio.

7. The Court of Appeals erred in affirming the judgment of the Court of Common Pleas which Court erred in overruling the motion of the defendant to direct a verdict in his favor at the close of the State's case, which motion was renewed at the close of all the evidence. Said motion should have been sustained on the ground that the State failed to prove the essential allegations of the indictment and on the ground that the State failed to prove the corpus delicti.

8. The Court of Appeals erred in affirming the judgment of the Court of Common Pleas which Court erred in its charge to the jury by failing to charge the jury on the subject of intentional killing, and on the subject of the corpus delicti.

[fol. 477] - 9. The Court of Appeals erred in affirming the judgment of the Court of Common Pleas which Court erred in refusing to give the charges to the jury affirmatively requested by the defendant.

(Signed) E. L. Mills and Edgar W. Jones of Amerman, Mills, Mills, Jones & Mansfield, Attorneys for Defendant-Appellant.

[fol. 478] IN THE SUPREME COURT OF OHIO, JANUARY TERM, 1946

Title of Case

STATE OF OHIO, Plaintiff-Appellee,

vs.

JOHN HARVEY HALEY, Defendant-Appellant

Attorneys: D. Deane McLaughlin, Court House Annex, Canton 2, Ohio; Amerman, Mills, Mills, Jones & Mansfield, E. L. Mills, Edgar W. Jones, 917 First National Bank Bldg., Canton 2, Ohio.

Action: Appeal from the Court of Appeals of Stark County. Motion for leave to Appeal from the Court of Appeals of Stark County.

MEMORANDA OF PLEADINGS, &C., FILED, WRITS ISSUED, &C.

Nov. 12, 1946. Notice of Appeal & Proof of Service filed.

Nov. 12, 1946. Motion for Leave to Appeal, assignments of error, Appellant's brief on Motion and proof of service filed.

Nov. 15, 1946. Court of Appeals Transcript, Original Papers and Bill of Exceptions filed.

Nov. 15, 1946. Cause docketed on Appeal as of Right.

Nov. 27, 1946. Motion by Appellee to Dismiss Appeal as of Right and Proof of Service filed.

Dec. 5, 1946. Leave to file Appellee's brief instantler filed.

Dec. 5, 1946. Appellee's printed brief filed.

Jan. 15, 1947. Motion for leave to appeal from the Court of Appeals of Stark County, overruled. J. 38, P-299.

Jan. 15, 1947. Motion by Appellee to dismiss Appeal as of Right, sustained. J. 38, P-299.

Jan. 15, 1947. Dismissed, No debatable constitutional question involved. J. 38, P-304.

[fol. 479] Jan. 22, 1947. Certified copy of entry sent Clerk.

Jan. 22, 1947. Mandate issued.

Jan. 24, 1947. Original Papers and Bill of Exceptions sent to Clerk.

JOURNAL ENTRIES

ORDER SUSTAINING MOTION TO DISMISS

Tuesday, January 14, 1947.

Motion by appellee to dismiss appeal filed as of right.

It is ordered by the Court that this motion be, and the same hereby is, sustained. J. 38. P-299.

ORDER OVERRULING MOTION FOR LEAVE TO APPEAL

Tuesday, January 14, 1947.

Motion for leave to appeal from the Court of Appeals of Stark County.

It is ordered by the Court that this motion be, and the same hereby is, overruled. J. 38, P-299.

JUDGMENT

Wednesday, January 15, 1947.

Appeal from the Court of Appeals of Stark County.

This cause came on to be heard upon the transcript of the Record of the Court of Appeals of Stark County, upon the motion of the appellee to dismiss the appeal, filed as of right herein, and was argued by counsel.

On consideration whereof, it is ordered and adjudged that said appeal be, and the same hereby is, dismissed for the reason no debatable constitutional question is involved in said cause.

It is further ordered and adjudged that the appellee recover from the appellant its costs herein expended, taxed at \$——.

Ordered, That a special mandate be sent the Court of Common Pleas of Stark County, to carry this judgment into Execution.

Ordered, That a copy of this entry be certified to the Clerk of the Court of Appeals of Stark County, for entry. J. 38, P-304.

[fols. 480-482] Clerk's Certificate to foregoing transcript omitted in printing.

[fol. 483] IN THE SUPREME COURT OF THE UNITED STATES
STIPULATION AS TO PRINTING RECORD—Filed August 19, 1947

It is stipulated and agreed by and between counsel for the petitioner and counsel for the respondent, that the following portions of the Bill of Exceptions can be omitted from the printed record:

Pages 4 to 14, inclusive.

Page 15, lines 4 to 23, inclusive.

Page 44, last four lines.

Page 45, lines 1 to 9, inclusive.

Page 54, lines 3 to 19, inclusive.

Page 185, last seven lines.

Page 274, last five lines.

Page 275.

Page 354, Statement of the Court, beginning at line 4.

Page 357, lines 1 to 12.

Pages 358 to 419, inclusive.

Pages 444 to 447, inclusive.

[fol. 484] It is further stipulated and agreed that the following portions of the transcript can be omitted from the printed record:

1. Opinion of the Court of Appeals.
2. Journal Entry, W/9-437 (names of jurors).
3. Journal Entry, W/9-455.
4. Journal Entry, W/9-499.
5. Journal Entry, W/9-501.
6. Journal Entry, W/9-506 (ordering transcript of charge).
7. Journal Entry, W/9-510.
8. Journal Entry, W/9-512.
9. Journal Entry, W/9-560.
10. Precipe for Transcript in Court of Appeals.
11. Signed copy of alleged confession (because it was read into the record).
12. Motion to set aside order fixing trial date and brief.
13. Memorandum of ruling on defendant's motion to vacate entry.
14. Journal Entry of February 25, 1946, ordering transcript.
15. Journal Entry of February 26, 1946.
16. Motion of Prosecuting Attorney to set case for trial.
17. Precipe for Jury.
18. Journal Entry—Clerk ordered to draw venire.
19. Journal Entry—Venire issued.
20. Venire.
21. Sheriff's return of venire.
22. Journal Entry—defendant served with copy of venire.
- [fol. 485] 23. Precipe for Jury.
24. Journal Entry—Clerk ordered to draw venire.
25. Venire.
26. Sheriff's return of venire.
27. Journal Entry of April 3, 1946 (ordering transcript).
28. Pencil and typewritten list of jurors attached to verdict.
29. Journal Entry—Defendant served with copy of venire.

30. Journal Entry of April 9, 1946 (ordering transcript of testimony of Dr. Hendershot).
31. Brief in support of motion for new trial.
32. Brief of Prosecuting Attorney.
33. Journal Entry of June 4, 1946 (ordering transcript of memorandum).
34. Memorandum of June 5, 1946 on motion for new trial.
35. Precipe for transcript.
36. Cost bill.
37. Journal Entry—Petit jurors drawn—special venire issued.
38. Criminal execution for costs.
39. Letter of Stark County Auditor.
40. Six precipes for subpoena.
41. File jacket.

E. L. Mills and Edgar W. Jones, of Amerman, Mills, Mills, Jones & Mansfield, Attorneys for Petitioner.
D. Deane McLaughlin, Prosecuting Attorney of Stark County, Ohio, Attorney for Respondent.

[fol. 486] [File endorsement omitted.]

[fol. 487] SUPREME COURT OF THE UNITED STATES

ORDER GRANTING MOTION FOR LEAVE TO PROCEED IN FORMA
PAUPERIS—June 16, 1947

On consideration of the motion to proceed further herein
in forma pauperis,

It is ordered by this Court that the said motion be, and the same is hereby, granted.

[fol. 488] SUPREME COURT OF THE UNITED STATES

ORDER ALLOWING CERTIORARI—Filed June 16, 1947

The petition herein for a writ of certiorari to the Supreme Court of the State of Ohio is granted.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied

the petition shall be treated as though filed in response to such writ.

Endorsed on cover: In forma pauperis. File No. 51,987, Ohio, Supreme Court, Term No. 51. John Harvey Haley, Petitioner, vs. The State of Ohio. Petition for a writ of certiorari and exhibit thereto. Filed March 12, 1947. Term No. 51 O. T. 1947.

(2225)

FILE COPY

SEP 22 1947

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1947

No. 51

*Petition
not printed*

JOHN HARVEY HALEY,

Petitioner,

vs.

THE STATE OF OHIO,

**BRIEF OF PETITIONER ON WRIT OF CERTIORARI TO
THE SUPREME COURT OF THE STATE OF OHIO**

E. L. MILLS and
EDGAR W. JONES of
AMERMAN, MILLS, MILLS, JONES &
MANSFIELD,

917 First National Bank Building,
Canton 2, Ohio,
Counsel for Petitioner.

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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1947

No. 51

JOHN HARVEY HALEY,

Petitioner,

vs.

THE STATE OF OHIO,

**BRIEF OF PETITIONER ON WRIT OF CERTIORARI TO
THE SUPREME COURT OF THE STATE OF OHIO**

Opinion in Courts Below

The official reports of opinions delivered in the Courts below are as follows:

Supreme Court of Ohio, 147 Ohio State 340;
Court of Appeals of Ohio, 79 Ohio Appeals 237.

**Grounds Upon Which the Jurisdiction of This Court Is
Invoked**

1. The admission in evidence of the confession of Petitioner which had been obtained while Petitioner was in the custody of the police and before he was taken before the

Juvenile Court, or before any committing magistrate, and which was obtained following prolonged questioning and physical violence while Petitioner was denied access to his attorney, is a violation of the Fourteenth Amendment to the Constitution of the United States, and the rights of Petitioner under said amendment are thereby affected.

2. The judgments of the Courts of the State of Ohio in the admission of the above-described confession in evidence are not in accord with the applicable decisions of this Court.

Statement of the Case

The Petitioner, John Harvey Haley, a fifteen-year-old colored boy, a Senior at McKinley High School in the City of Canton, Ohio, was indicted for murder in the first degree for the killing of one William Karam on the night of October 14, 1945. He was tried by a jury on that charge in the Common Pleas Court of Stark County, Ohio, and the jury returned a verdict of guilty with a recommendation of mercy. Motion for new trial having been overruled, he was sentenced to the Ohio State Penitentiary for life. Appeal was duly taken from this judgment to the Court of Appeals of the Fifth Appellate District of Ohio, which Court, on October 25, 1946, affirmed the judgment of the Common Pleas Court of Stark County. Appeal was then prosecuted to the Supreme Court of the State of Ohio, both as of right, because a constitutional question was involved, and subject to the allowance of a motion for leave to appeal. On January 15, 1947, the Supreme Court of Ohio dismissed the appeal as of right, and overruled the motion for leave to appeal.

The evidence showed that early in the evening of October 14, 1945, Petitioner Haley, and two other boys, Willie Lowder and Al Parks, met in a confectionery in Canton where they spent some time. A discussion about

guns having taken place, Haley said that his landlord had one (R. 185). He went to his home, got a Colt 32 Automatic from a trunk in the bathroom, and gave it to one of the other boys. They then went out for a walk, with the intention of going out into the woods to do some shooting, which, however, they did not do (R. 108-9). Near midnight, after they had been walking for some time, they arrived in front of the confectionery owned and operated by William Karam, at the northwest corner of Market Avenue, South, and Navarre Road, Southwest, in the City of Canton, Ohio. One of the boys suggested that they go in and get a Coca-Cola, but Haley did not want to, so the other two went in and Haley waited for them outside (R. 204). In a few moments, Haley heard a shot inside the store and ran away. When he saw the other boys the next day, they would not tell him what had happened.

Karam staggered out the door of his store, fell to the sidewalk, and died in the ambulance on the way to the hospital of a gunshot wound.

Several days later, on October 19, 1945, two police cruisers, loaded with detectives and officers, descended upon Haley's home in the middle of the night and hauled him off to the Detective Bureau in Canton (R. 188). There followed the sorry spectacle of police and detectives beating and questioning this fifteen-year-old boy in relays through the night, for six or seven hours. (The police officers admitted the questioning in relays, but smugly denied the beating on the stand, but Haley's ripped and torn shirt and trousers were introduced in evidence as defendant's Exhibits 1 and 2 (R. 82), and Haley testified to the beatings he received) (R. 85). His constitutional rights were not explained to him; he was not taken then or for several days thereafter before the Juvenile Court; no report was made to the Juvenile Court; he was never taken to the Municipal Court of the City of

Canton, or before any other committing magistrate (R. 96); he was held incommunicado in the City Jail for several days; his mother and his attorney were denied access to him (R. 96). As one of the officers put it on the stand, "A stopper was put on him" (R. 79).

Early in the morning of October 20, 1945, the police typed a confession which they forced Haley to sign, in which there appeared the statement that the three boys intended to rob Karam and that Haley stayed outside to act as lookout while the other two boys went in. This was categorically denied by Haley on the stand (R. 204). Several days after this confession was extracted from him, Haley was removed from the Canton City Jail to the Stark County Jail, and then for the first time was taken before any magistrate when he was taken to the Juvenile Court of Stark County.

At the trial of the case, the State of Ohio offered in evidence the confession, which is herein referred to. It was objected to by the defendant on the ground that its use under these circumstances would constitute a violation of the Due Process Clause of the Fourteenth Amendment to the Constitution of the United States. The objection having been overruled by the trial court after hearing the evidence on the question of the voluntariness of the confession in the absence of the Jury, the confession was admitted in evidence (R. 98), and it was the only evidence which in any way connected Petitioner with the crime charged in the indictment. It is conceded that the case for the State stands or falls on the validity of the confession.

The question of the admissibility of this confession in evidence under the Fourteenth Amendment to the Constitution of the United States was first raised by Petitioner by objection to its admission at the trial, and the point was reiterated on motion in the trial court to direct a verdict in favor of the defendant, in brief and argument on motion for

new trial in the trial court, and in assignments of error, brief and argument in both the Court of Appeals for the Fifth Appellate District of Ohio and the Supreme Court of Ohio.

Assignments of Error

- I. The Court of Common Pleas of Stark County, Ohio, erred in admitting in evidence the confession of Petitioner which had been obtained while Petitioner was in the custody of the police and before he was taken before the Juvenile Court, or before any committing magistrate, and which was obtained following prolonged questioning and physical violence while Petitioner was denied access to his attorney, because the use in evidence of a confession so obtained is a violation of the Fourteenth Amendment to the Constitution of the United States.
- II. The Court of Appeals of the Fifth Appellate District of Ohio erred in affirming the judgment of the Court of Common Pleas of Stark County, Ohio.
- III. The Supreme Court of Ohio erred in affirming the judgment of the Court of Appeals of the Fifth Appellate District of Ohio, and in dismissing the appeal of petitioner from that judgment.

Argument

ASSIGNMENT OF ERROR No. I

The statutes of the State of Ohio involved in this Assignment of Error are:

SECTION 13432-3, GENERAL CODE OF OHIO, which provides:

"Duty of peace officer arresting without warrant.—When a peace officer has arrested a person without a warrant, he must without unnecessary delay, take the person arrested before a court or magistrate having

jurisdiction of the offense, and must make or cause to be made before such court or magistrate a complaint stating the offense for which the person was arrested."

SECTION 13432-15 OF THE GENERAL CODE OF OHIO, which provides:

"Right of attorney to visit prisoner.—After the arrest of a person, with or without a warrant, any attorney at law entitled to practice in the courts of this state may, at the request of the prisoner, or any relative of such prisoner, visit the person so arrested and consult with him privately. • • •"

SECTION 1639-27 OF THE GENERAL CODE OF OHIO, which provides in part:

"If not so released, such child shall be placed in the custody of a probation officer or other person designated by the court, or taken immediately to the court or to the place of detention designated by the court, and the officer taking it shall immediately notify the court and shall file a complaint when directed to do so by the court. • • •"

The sole contention of the Petitioner in this cause is that the methods used in obtaining the confession, which alone supports the conviction, are such that the use of the confession in evidence is a violation of the due process clause of the Fourteenth Amendment to the Constitution of the United States.

This Court has repeatedly held that it is not bound by the findings of the State Courts on the question of whether or not the confession was properly obtained, but will make its own independent investigation of the facts. In *Chambers v. Florida*, 309 U. S. 227, 84 L. Ed. 716, the first syllabus provides:

"1. The Supreme Court of the United States is not precluded by the verdict of the jury in a case in which a conviction of a capital offense was obtained upon a

confession, from determining for itself whether the confession was improperly obtained where the convicted person has seasonably asserted his constitutional right to have his guilt or innocence determined without reliance upon a confession improperly obtained."

It should be noted, in passing, that the Petitioner here did "seasonably assert his constitutional right" by raising the issue at the earliest opportunity; namely, when the confession was first offered in evidence in the trial court. Two other important cases on this point are *Ashcraft v. Tennessee*, 322 U. S. 143, 88 L. Ed. 1192, where the first syllabus provides:

"1. Where the claim is made of denial of due process in the State Court by obtaining a conviction through use of a confession procured by coercion, the Supreme Court of the United States is bound to make an independent examination of the record to determine the validity of the claim, and the performance of this duty cannot be foreclosed by the finding of a court, or the verdict of a jury, or both."

and, *Malinski v. New York*, 324 U. S. 401, 89 L. Ed. 1029, where the first syllabus provides:

"1. The question whether there has been a violation of the due process clause of the Fourteenth Amendment, by the introduction of an involuntary confession in a criminal prosecution in a State Court, is one on which the Supreme Court must make an independent determination on the disputed facts."

All the facts in the case at bar indicate a violation of the Fourteenth Amendment in accordance with the doctrine laid down by this Court in a long line of decisions. This boy was subjected to relentless questioning by relays of officers throughout the night. Great care was taken to keep him away from his family and his attorney. He was not then, or for several days thereafter, taken before a com-

mitting magistrate. No report was made to the Juvenile Court, nor was he taken to that Court—all in violation of the statutes of the State of Ohio. He was beaten and kicked. The overwhelming weight of the evidence so indicates, in spite of the denial by the police. In short, the record shows that the police knew the only way to get a conviction was to obtain a confession, and they did not care what methods were used to obtain it. The police undertook to assume that their authority was paramount to that of the legislature of Ohio. The Fourteenth Amendment strikes down that method of obtaining evidence.

An examination of the decisions of this Court reveals that the police methods used in this case are precisely those which this Court has unequivocally condemned every time the question has arisen. For example, in *Chambers v. Florida, supra*, the proposition was established that use by the State of an improperly obtained confession to procure conviction of crime, may constitute a denial of due process of law as guaranteed in the Fourteenth Amendment; and, in the language of the fourth syllabus of that case: "the due process provision of the Fourteenth Amendment was intended to guarantee procedural standards adequate and appropriate then and thereafter to protect at all times persons charged with, or suspected of crime, by persons holding positions of power and authority."

Having established the rule that an improperly obtained confession may constitute a denial of due process, it next becomes important to determine what circumstances are to be taken into consideration in deciding whether a particular confession is improperly obtained, and, again, the language of the third syllabus states the proposition concisely:

"3. Confessions of the commission of a robbery and murder must be deemed involuntary so as to render their use in obtaining convictions a violation of the

due process clause of the Fourteenth Amendment, where obtained from young negroes arrested without warrant, held in jail without formal charges, and without being permitted to see or confer with counsel or friends, believing that they were in danger of mob violence, made at the end of an all-night session following five days of fruitless questioning, each by himself, by State Officers and other white citizens, in the presence of from four to ten white men, and after a previous confession had been pronounced unsatisfactory by the Prosecuting Attorney."

Seven points of striking similarity between Chambers v. Florida and the case at bar are immediately apparent:

- (1) In both cases a negro was arrested following the murder of a white man.
- (2) In both cases the defendant was held in custody without a warrant, and was not taken before a committing magistrate.
- (3) In both cases the confession followed prolonged questioning by police officers varying in number from four to ten.
- (4) In both cases the evidence was in sharp conflict as to whether or not there had been physical violence.
- (5) In both cases the defendant was denied access to counsel or to his friends.
- (6) In both cases the prisoner was arraigned several days after he confessed.
- (7) In both cases the conviction of murder in the first degree stood on the confession alone.

White v. Texas, 310 U. S. 530, 84 L. Ed. 1342, also presents facts which are quite similar to those of the case at bar.

In that case the confession was obtained after the defendant, an illiterate farm hand, had been held in jail for several days without charges filed against him, without legal coun-

sel, and out of touch with his friends or relatives. On several nights he had been taken, handcuffed by armed officers, out into the woods for interrogation, and while he was in jail the Sheriff put the defendant by himself and kept watching and talking to him. The confession was obtained after interrogation by the County Attorney from approximately 11:00 P. M. to 3:00 or 3:30 A. M., during which period the officers who had taken him out to the woods were in and out of the room. The prosecution was for rape, and the prisoner was arrested without warrant. Again, the testimony was in conflict on whether or not he had been beaten and whipped while out in the woods. This Court, on the authority of *Chambers v. Florida, supra*, held the use of the confession to be a violation of the Fourteenth Amendment, and the language at page 1345 of 84 L. Ed. is particularly appropriate to the case at bar:

“Due process of law preserved for all by our Constitution, commands that no such practice as that disclosed by this record, shall send any accused to his death.”

The next time a question similar to the one at bar was presented to this Court, was *Ashcraft v. Tennessee*, 322 U. S. 143, 88 L. Ed. 1192, in which the Petitioner's conviction of murder was based solely on a confession obtained before he had been arraigned, and after about 36 hours of practically continuous questioning by relays of officers, at the end of which time the confession was reduced to writing, but was not signed. The conclusion to which this Court came in reversing the conviction is well stated in the second syllabus:

“2. The use in a State Court in obtaining a conviction of murder as an accessory before the fact of a confession made by the victim's husband, a skilled dragline and steam shovel operator, of excellent reputation, who

had been arrested merely on suspicion, near the end of a thirty-six hour period of practically continuous questioning, under powerful electric lights, by relays of officers, experienced investigators and highly-trained lawyers, is by reason of the inherently coercive effect of such interrogation a violation of constitutional right."

This case indicates that it is not the use, or lack of use, of physical violence on which these decisions rest, but rather on the inherently coercive effect of the police methods used. Again, the elements which are present in the *Ashcraft* case are the same as those in the case at bar—continuous questioning, relays of officers, the defendant unable to have the benefit of the advice of his friends or his attorney.

It should be noted, in passing, that the *Ashcraft* case was presented again to this Court in *Ashcraft & Ware v. Tennessee*, 327 U. S. 274, 90 L. Ed. 667 which followed a re-trial of the case in the trial court. At the second trial, instead of introducing in evidence the written confession, the prosecution offered the testimony of the officers and other persons who were present during the questioning of the defendant, to show the oral statements made by him leading up to the written confession. It is, of course, obvious that this was just as much a denial of the defendant's constitutional rights as had been the previous admission in evidence of the written confession, and on that ground the conviction was again reversed.

Possibly the strongest of all the cases coming up from the State Courts, because of the fact that the decision is based not on any positive acts done by the police, but on the atmosphere of fear in which the defendant was placed, is *Malinski v. New York*, 324 U. S. 401, 89 L. 7d. 1029. In that case the petitioner was arrested on October 23, 1942, and taken to a hotel in Brooklyn, where he arrived about

8:00 o'clock in the morning. He was immediately stripped and kept naked until 11:00 A. M., at which time he was given a blanket. He remained that way until about 6:00 o'clock P. M. The evidence was in conflict as to whether he was beaten during that period, but this Court, for the purpose of the decision, assumed that he was not. He was subjected to intermittent questioning during the day, and made an oral confession about 6:00 o'clock in the evening. He was kept in the hotel that night and for the next three days. He was taken to the scene of the crime, questioned intermittently during that period, and on the 27th day of October, he signed a written confession, after which he was arraigned. During the time of the questioning and while he was held in the hotel, he was denied access to his attorney or to his friends.

After repeating the proposition that the use of a coerced or compelled confession to procure conviction of crime constitutes a violation of the due process clause of the Fourteenth Amendment, this Court goes a step beyond the rule of the previous cases, as is indicated by the language of the third and fourth syllabuses:

"3. If a coerced confession by the accused is introduced at the trial, *a judgment of conviction will be set aside even though the evidence apart from the confession might have been sufficient to sustain the jury's verdict.*" (Emphasis added.)

"4. A confession will be deemed to have been coerced so as to make its introduction in evidence a denial of due process where a defendant charged with murder in the commission of a robbery, upon being arrested was taken to a hotel, stripped to see whether he had any wounds, and not allowed for several hours to put on his clothes, was not allowed to see a lawyer although he asked for one, or any friends other than one also charged with participation in the robbery; whereupon, after being held from 8:00 A. M. to 6:00 P. M., he con-

fessed although he was not subjected to more than occasional questioning, or anything except his own apprehension that he might be beaten." (Emphasis added.)

Because of the fact that there was evidence in the *Malinski* case which might have been sufficient to sustain the verdict even aside from the confession, and because of the fact that the questioning was only occasional and the principal factor was the defendant's apprehension of what might happen to him, it would seem that the case at bar is a *fortiori* to that case.

While the cases which have come up from lower Federal Courts do not rest upon the Fourteenth Amendment, as the cases from the State Courts must, nevertheless those decisions are of importance here because this Court has, on considerations of fundamental liberty and natural justice, applied the same tests to the Federal cases as the Fourteenth Amendment requires to be applied to the State cases. The Fourteenth Amendment assures natural justice to the individual as against the State, and it is, therefore, important to examine the Federal cases to determine what sort of conduct this Court considers to be repugnant to considerations of natural justice. For example, in *McNabb v. The United States*, 318 U. S. 332, 87 L. Ed. 819, the defendants were arrested, and while they were being held in jail and before they were taken before a United States Commissioner, they confessed. The confessions followed prolonged questioning, *but it was not contended that they were involuntary*. The Federal Statute required the arresting officer to take the accused before a United States Commissioner immediately after his arrest. The questioning was continuous and unremitting over a period of two days, and the defendants were ignorant and inexperienced young men, who were without the aid of friends or the benefit of

counsel. They were advised by the officers that they did not have to make a statement and that they need not fear force, that any statement made by them would be used against them, and that they need not answer any questions unless they so desired. At page 345, Mr. Justice Frankfurter, speaking for the Court, said: "Plainly a conviction resting on evidence secured through such a flagrant disregard of the procedure which Congress has commanded, cannot be allowed to stand without making the Courts themselves accomplices in wilful disobedience of the law."

Inasmuch as the Federal Statute involved in the *McNabb* case was almost identical in language with the Statute of the State of Ohio involved in the case at bar, it would seem sound to say that a conviction resting on evidence secured through a flagrant disregard of the procedure which the legislature of Ohio has commanded, cannot be allowed to stand without making the Courts themselves accomplices in wilful violation of the Fourteenth Amendment. The *McNabb* case, in substance, holds that the authority of Federal officers is not paramount to that of Congress, and we think that our position is unassailable when we say that the Fourteenth Amendment prevents the authority of State Police Officers from being paramount to that of the State Legislature.

In *Anderson v. The United States*, 318 U. S. 350, 87 L. Ed. 829, the defendants were arrested by State Officers, and subjected to intermittent questioning over several hours; they were not taken before a committing magistrate in violation of the Statute of the State of Tennessee, which provides that no person can be committed to prison for any criminal matter until examination thereof be first had before some magistrate. The confessions obtained while the defendants were in the custody of State Officers were admitted in evidence in the Federal prosecution, and the

conviction was reversed by this Court on the authority of *McNabb v. The United States, supra*, the decision again being based on considerations of justice; and, as in all the cases, there were present the elements of intermittent questioning over a period of some time, refusal to permit the defendants to consult with their friends, relatives, or counsel, and the holding of the defendants in custody without arraignment, in violation of the law.

It appears to us to be an obvious absurdity to hold that confessions so obtained in violation of the State law are not admissible in a Federal prosecution because the method of their obtaining is a violation of natural justice, and at the same time to say that the Fourteenth Amendment permits their use in a prosecution under the State law.

This Court, in *U. S. v. Mitchell*, 322 U. S. 65, 88 L. Ed. 1140, in commenting on the *McNabb* case, observed:

"That case respected the policy underlying enactments of Congress, as well as that of a massive body of State legislation, which, whatever may be the minor variations of language, require that arresting officers shall with reasonable promptness bring arrested persons before a committing authority."

And, again,

"Inexcusable detention for the purpose of illegally extracting evidence from an accused, and the successful extraction of such inculpatory statements by continuous questioning for many hours, under psychological pressure, were the decisive features in the *McNabb* case, which led us to rule that a conviction on such evidence could not stand."

Again we urge that if it is contrary to natural justice to use this type of confession in a Federal prosecution, it is contrary to the Fourteenth Amendment to use it in a State prosecution. A set of facts cannot exist which could

logically be said to be contrary to natural justice and at the same time consistent with the Fourteenth Amendment.

In the Courts below, counsel for the State of Ohio have placed great reliance on *Lisenba v. California*, 314 U. S. 219, 86 L. Ed. 166, where the conviction was affirmed by this Court. That case, however, is readily distinguishable from the case at bar, because in that case,

(1) The confession was not made for eleven days after the time when the defendant was subjected to the questioning and physical ill-treatment.

(2) Before the confession, the defendant had been afforded a full opportunity to see and consult with his attorney.

(3) The conviction did not depend upon the confession alone.

(4) The Constitutional question was not raised at all at the trial, nor until re-hearing in the Supreme Court of California.

Actually, *Lisenba v. California*, *supra*, does not represent a departure from the rule laid down in the other cases, as is apparent from the seventeenth syllabus:

"17. Where a prisoner held incommunicado has been subjected to questioning by officers for long periods, and deprived of the advice of counsel, and has made a confession used in obtaining his conviction, the Supreme Court of the United States will scrutinize the record with care to determine whether by the use of his confession he has been deprived of liberty or life through tyrannical or oppressive means."

Factually, the case is different from the case at bar, and presents a different pattern from those other cases to which we have referred in this brief, but the same principle of law which led this Court to affirm the conviction in that case requires the setting aside of the conviction in this case.

The soundness of all the reasoning and argument which produced the doctrine which this Court has laid down in the cases discussed in this brief, and the importance of all the protection which the Fourteenth Amendment surrounds a person charged with crime, are emphasized and highlighted by the situation which is now presented to the Court in the case at bar; namely, the fact that the petitioner is a fifteen-year-old boy. If due process, as this Court has so often held, requires proper police methods and strict compliance with the State law in the case of an adult, how much more is that true in the case of a child? Due process becomes, what this Court has always refused to let it become, merely a pretty phrase if the confession of a child obtained as this one was, is permitted to be used to deprive him of his liberty.

ASSIGNMENTS OF ERROR NOS. II AND III

The arguments advanced under the First Assignment of Error are the same arguments in support of the Second and Third Assignments of Error, and will not be repeated, but for the same reasons therein advanced we submit that the Courts of the State of Ohio were in error in permitting the introduction of the confession in evidence, because its use constitutes a violation of the due process clause of the Fourteenth Amendment to the Constitution of the United States, and that, therefore, this Court should reverse the judgments of the Courts below.

Respectfully submitted,

E. L. MILLS,
EDGAR W. JONES,
Of AMERMAN, MILLS, MILLS,
JONES & MANSFIELD,
Attorneys for Petitioner.

APPENDIX**IN THE COURT OF COMMON PLEAS**

No. 13,978

STATE OF OHIO,
Stark County, ss:

STATE OF OHIO, *Plaintiff,**vs.*JOHN HARVEY HALEY, *Defendant***MEMORANDUM**

Counsel for Plaintiff: The Prosecuting Atty.

Counsel for Defendant: Amerman, Mills, Mills, Jones & Mansfield.

SWEITZER, J.:

1. There are or have been before the court on motions for new trials, three companion criminal actions, numbered 13,978, *Ohio v. Haley*, 13,979, *Ohio v. Lowder* and 13,980, *Ohio v. Parks*, in connection with which verdicts of guilty of murder in the first degree recommending mercy, have been returned. In separate indictments each defendant is charged with having on or about October 14, 1945 in Stark County, Ohio, committed the crime of unlawfully, purposely and while attempting to perpetrate robbery, killing one William Karam, then and there being, contrary to the statute, etc., Section 12,400 G. C. As observed, the indictments are separate, the defendants not having been charged jointly in the indictment, with the commission of crime. Each defendant was tried separately, defendants Haley and Lowder by a judge and a jury, and defendant Parks, by a three-judge court. As the questions raised by the separate motions are not identical, each motion, of course, must be considered and ruled on separately from the others.

2. For comments on questions raised in common by motions for new trial in case 13,979, *Ohio v. Willie Lowder* and

in the instant case, counsel are referred to the memorandum denying a new trial in said Lowder case, which is on file in the clerk's office. It is believed some of the grounds urged by counsel for defendant in the instant case result from counsel not having had for reference at the time the motion and brief in support thereof were prepared, a copy of the charge in the Haley case. Particularly does this seem to be true in connection with the part of the judge's charge relating to the element purposeful or intentional killing. It is thought that element is amply explained in the charge to the jury. It is referred to several times in the charge. The alleged ground that the so-called confession should have been denied admission in evidence because of the statutes applicable to juvenile court procedure is referred to and considered in said memorandum in *Ohio v. Lowder*.

Juvenile Court Act, original and as amended;

Malone v. State, 130 O. S. 443;

State v. Marinski, 139 O. S. 559.

3. The two alleged grounds given most attention in considering this motion relate to the questions, first, whether the submitting of the so-called confession to the jury for determining its voluntariness, defendant contending and the State denying, its submission violates the due process provision of the constitution, and, second, the injection of several remarks and questions on the part of the assistant prosecuting attorney, the defendant claiming and the state denying, that this constitutes reversible prejudicial misconduct on the part of the state. Their injection in the trial, of course, was irregular and constitutes improper trial procedure. It appears, however, that in each instance, upon objection being made in behalf of the defendant, the trial judge repudiated the said conduct on the part of the state and in effect instructed the jury to disregard same. It is believed the prompt repudiation by the judge dispelled any harm to the defendant that might have resulted to him had the judge acquiesced in the injection of said comments, questions and remarks. The authorities seem to indicate that before error of the sort in question constitutes a basis for setting a verdict aside, etc., the misconduct of counsel must be not only erroneous but prejudicial to the defendant.

as well. In the light of all the evidence in the case it is not thought the conduct of the assistant prosecuting attorney complained of by defendant, constitutes prejudicial error warranting setting the verdict aside.

Michigan Law Review of December, 1945, Vol. 44, No. 3;

McNabb v. U. S., 318 U. S., 63 Sup. Ct. R. 608;

Palmore v. State, 244 Ala. 229, 12 So. 2nd 856;

People v. Goldblatt, 383 Ill. 188, 99 N. E. 2nd 41;

Common v. Mayhew, 297 Ky. 178, 178 S. W. 2nd 932;

Ashcraft v. Tenn., 64 Sup. Ct. R. 921, 322 U. S. 143;

Snook v. State, 34 O. A. 60, Aff. by Supreme Court;

Spears v. State, O. S. 583;

Burdge v. State, 53 O. S. 512;

Section 13,432-15 G. C.;

Section 13,432-16 G. C.;

Statutes requiring that persons under eighteen years of age be taken before juvenile judge,—

Warder, B. & G. Co. v. Jacobs; 58 O. S. 77;

Hayes v. Smith, 62 O. S. 161;

State v. Thayer, 124 O. S. 1.

In considering this motion the theory on which this prosecution was tried has been kept in mind. Of course, the burden is on the state to establish beyond a reasonable doubt, all material elements of the crime charged, to wit, purposely killing Karam while in the perpetration of an attempt to rob him. The defense was made almost exclusively, on the contention that the defendant was an innocent bystander without knowledge or information that his associates entered the confectionery in question for the purpose of, and with the intention of committing robbery. The evidence, the opening statement for the defendant and the arguments in behalf of the defendant, all of which were taken by the reporter so indicate. Defendant's so-called confession, however, is to the effect he was a joint participant and confederate in the actual planning and perpetration of the attempted robbery and murder in question. The state claims that the defendant and his two associates jointly planned the robbery, jointly participated in the attempt to perpetrate it and are confederates and joint participants in the murder involved. It is believed

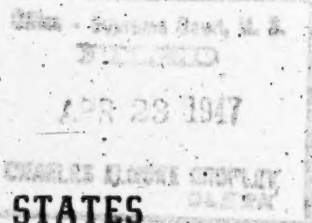
the jury in the light of the evidence was fully warranted in returning the verdict, which was returned, viz. guilty of murder in the first degree, recommending mercy. And further it is believed that prejudicial error warranting setting the verdict aside, did not intervene at the trial. Some authorities not heretofore cited, relied on in part by the judge at the trial of the case are,

Stephena v. State, 42 O. S. 150;
Conrad (Castor) v. State, 75 O. S. 52;
Bandy v. State, 102 O. S. 384;
Ohio v. Turk, 120 O. S. 245, 48 O. A. 480;
State v. McKinney, 64 N. E. 2nd 129;
State v. Colley, 65 N. E. 2nd 159;
Thomas, Warden v. Mills, 117 O. S. 114;
Burchett v. State, 35 O. A. 463.

Arrangements will be made to have the defendant and his counsel in court promptly, when official ruling on defendant's motion will be made, and in the event said motion should be then officially denied, sentence will be pronounced.

(2401)

FILE COPY



SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1947

No. 51

JOHN HARVEY HALEY,

Petitioner,

vs.

STATE OF OHIO,

Respondent

**BRIEF OF RESPONDENT IN OPPOSITION TO PETI-
TION FOR WRIT OF CERTIORARI**

D. DEANE McLAUGHLIN,

Prosecuting Attorney;

W. BERNARD RODGERS,

Asst. Prosecuting Attorney;

JOHN ROSSETTI,

Asst. Prosecuting Attorney,

Courthouse, Canton, 2, Ohio,

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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1947

No. 51

JOHN HARVEY HALEY,

Petitioner,

vs.

STATE OF OHIO,

Respondent

BRIEF OF RESPONDENT IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

I

Statement of the Case

Counsel for petitioner omitted in their statement of the case the fact that the petitioner was on the 23rd day of October, 1945, charged in the Juvenile Court of Stark County, Ohio, with being a delinquent boy.

Counsel for petitioner also omitted the fact that the Juvenile Court on the 14th day of November, 1945, in accordance with Section 1639-32 of the General Code of Ohio, accorded the petitioner a full and complete hearing as to his mental and physical condition; and that thereafter the Honorable Thomas H. Leahy, Judge of said Court,

relinquished jurisdiction in accordance with said statute and bound the petitioner over to the Common Pleas Court for disposition as an adult felon.

The petitioner's statement of the case definitely ends at the close of the first paragraph on page 2 of said Brief.

Counsel for petitioner, beginning with the second paragraph on page 2, interweaves argument with statement of the case. This argument as to facts we shall answer under the proper subdivision #2 of this Brief.

II

ARGUMENT

Summary of the Argument

POINT A

The facts in this case in no manner parallel facts as set forth in the nine outstanding cases involving the due process clause and decided by the United States Supreme Court since 1941.

The petitioner, together with Alfred Parks and Willie Lowder, ages 16 and 17 years respectively, entered into a common plan and design to commit robbery. The petitioner furnished the gun and was the lookout in the attempted robbery of William Karam on October 14, 1945.

Lowder and Parks entered Karam's store and killed him. After the shooting, the petitioner, with his co-participants, fled from the store and in an alley in the southeast section of the City of Canton, Ohio, formulated a story they would tell if picked up by police. The petitioner told the story, and then changed it (*see page 175 of the Record*), and later made a signed confession. *See pages 191 to 197 of the Record.*

The petitioner was arrested October 19, 1945, at about midnight and was taken to police headquarters. He was

questioned by detectives for about three or four hours. *See page 78 of the Record.*

After making an oral confession to police as shown by pages 69 and 88 of the Record, he signed a written confession which took the officers an hour and a half to write on the typewriter, the writing being completed at five o'clock in the morning. He made his written and oral confession not as a result of any mistreatment, but did so voluntarily after being shown the written statements of his co-participants in the crime. *See page 90 of the Record.*

His constitutional rights were read to him. *See page 92 of the Record.*

After his confession he was placed in the city jail, this being on a Friday. His mother went to the city jail on Monday, October 22, 1945. *See page 117 of the Record.*

He was taken to the county jail on Tuesday, October 23, 1945. *See page 122 of the Record.*

His mother, Susan Haley, on Tuesday, October 23, 1945, was by the county authorities denied admission to the jail because visiting day was not until Thursday. *See page 116 of the Record.*

On October 23, 1945, he was formally charged with being a delinquent boy. It can readily be seen that he was not held incommunicado and no place in the Record shows he was denied counsel. Only five hours elapsed between the time he was first arrested and the signed confession was made. Obviously no courts are open at that time of the night. The Juvenile Court at its early convenience conducted a complete hearing according to the Ohio statute and bound him over to the Common Pleas Court as an adult felon.

The only evidence in the Record of mistreatment is his own statement. He exhibited to the jury a pair of pants with the entire seat gone, and a blue shirt on which there was some claimed blood.

The evidence is undenied that immediately after he signed the written confession he took police officers to his home and showed them the trunk from which he got the gun. The jury evidently did not believe his story of the beating, because officers surely would not take him to his mother with his trousers practically torn off, and his shirt covered with blood. On the contrary, the evidence showed that Haley was not wearing a blue shirt the morning he made his confession but was wearing a white one and exhibited no evidence of having been beaten. *See pages 211 and 215 of the Record.*

Counsel for the petitioner on page 3 of their Brief, say that page 113 of the Record discloses that a police officer on the witness stand said, "A stopper was put on him." We submit that page 113 of the Record, nor any other page discloses such testimony.

On page 4 of the Brief of counsel for the petitioner, the claim is made that the only evidence the State had was the confession. This is not a correct statement of the Record. The State could have convicted the petitioner without the confession because of the bullet that was taken from Karam's body, and an empty cartridge that was found at the scene of the crime. *See page 51 of the Record.*

There was only one gun used in this crime and that was a 32 automatic pistol which Haley furnished. The State connected Haley with the death weapon by the testimony of Robert F. Zimmer, F. B. I. firearms examiner. Zimmer testified that the cartridge found in the store and the bullet that was taken from Karam's body were fired from the pistol that Haley took from his father's trunk and gave to his co-participants in the crime. *See pages 255, 256 and 261 of the Record.*

It was anticipated by the State of Ohio, that the petitioner would make the claim that he was a poor little colored boy that had been badly beaten by police officers and that his

confession was not voluntary. For that reason the State of Ohio made its case to the satisfaction of the courts and jury on the expert testimony as to the gun, cartridge and bullet.

POINT B

The Ohio rule determining the admissibility of confessions does not work a deprivation of the due process clause of the Constitution of the United States.

It is contended that the confession was inadmissible because obtained before a charge.

The matter of the admissibility and use of confessions in relation to the due process provisions of the Federal Constitution has been considered by the United States Supreme Court in no less than nine outstanding cases since 1941. These cases arise under provisions in the criminal codes of the various states and the Federal Government requiring in effect that upon arrest an accused shall be taken before a magistrate. Failure to abide by this rule becomes a basis therefore of invoking the Fifth and Fourteenth Amendments of the Federal Constitution relating to deprivation of liberty without due process of law.

At the outset it should be noted that the Fifth Amendment by a long line of decisions in both the state and federal courts, is held not to apply to state proceedings and consequently need not be considered in other than federal cases. The Fourteenth Amendment, however, is binding upon federal and state governments alike. This distinction has not been broadened by the recent pronouncements of the Supreme Court relative to the admissibility and use of confessions obtained before a charge.

The Supreme Court of the United States has not at any point overruled its findings in the case of *Lisenba v. California*, 314 U. S., 219. The facts here were briefly:

Defendant and Hope, it was alleged, entered into a conspiracy to kill defendant's wife. The arrest was made April 19 on a charge of incest on which charge defendant was booked. On April 21 he was given a hearing and remanded to jail. On May 2 and 3 he made various statements implicating himself in his wife's death. Hope confessed and pleaded guilty. On trial claim was made that neither defendant's statements nor Hope's confession were voluntary. A hearing was held by the court which ruled statements and confession admissible. Defendant claimed he had been denied access to counsel in that he had been held incommunicado and that the confession of Hope had been obtained by promise of leniency.

Under the circumstances the court held, with Black and Douglas dissenting:

"The Fourteenth Amendment leaves California free to adopt, by statute or decision, and to enforce such rule for determining admissibility of confession as she elects, whether or not it conforms to that applied in federal courts or in other state courts, but the adoption of the rule of her choice cannot foreclose inquiry regarding whether, in a given case, the application of that rule works a deprivation of prisoner's life or liberty without due process of law."

"Where the evidence regarding the methods employed to obtain a confession is conflicting, and where, although denial of due process was not in issue in the trial, an issue has been resolved by court and jury which involves an answer to the due process question, *the United States Supreme Court in determining issue of denial of due process of law accepts the determination of the trier of the facts unless it is so lacking in support in evidence that to give it effect would work that fundamental unfairness which is at war with due process.*"

"Where California trial judge and jury passed on question, in murder prosecution, whether accused's confessions were freely and voluntarily made, and

the tests applied in answering that question rendered the decision one that also answered the question whether the use of the confessions involved a denial of 'due process of law' notwithstanding the issue submitted and was not by name one concerning due process, the United States Supreme Court could not on the record determine that the illegal conduct in which law enforcement officers of California indulged by prolonged questioning of the accused before arraignment and in absence of counsel, or their further questioning after an interval of 11 days, coerced the confessions, and therefore introduction thereof did not constitute an infringement of 'due process of law'."

Consideration of the recent Supreme Court cases on this question by arranging them in chronological order is helpful in observing the trend of the Court's thinking but will also show considerable broadening of the Court's view of this subject and the great variance in the thinking of the individual justices.

The case of *Chambers v. Florida*, 309 U. S. 227, was decided February 1940, by a unanimous court (opinion by Justice Black). The preliminary history of this case is interesting. The original conviction was affirmed by the Supreme Court of Florida. After this a latter petition for rehearing was granted and a retrial ordered. The conviction upon retrial was again reversed by the state Supreme Court and remanded. The conviction on the second retrial was again reversed by the Supreme Court and remanded with a change of venue. The conviction on the third retrial was finally affirmed by the Supreme Court of the state, but reversed in the Supreme Court of the United States.

The basic facts were as follows:

A white man was murdered about 9:00 p. m., May 13, 1933. By 10:00 o'clock one of the defendants, a Negro, had been

arrested and within the next twenty-four hours some forty more Negroes were arrested, including the other defendant. All arrests were without warrants and the prisoners were confined in the jail. Two nights later Chambers was removed to Miami, after being reminded of the possibility of mob violence. The next day he was returned to the scene of the crime and from May 14 until May 20 all suspects were subjected individually to extensive questioning. From the afternoon of May 20 until sunrise of the twenty-first, Chambers underwent persistent and repeated questioning. At no time were prisoners permitted counsel. There was conflict as to whether or not any actual physical mistreatment occurred. From 1:30 p. m. Saturday (twentieth) until sunrise Sunday (twenty-first) there was a continual battery of questions until defendants confessed. Two days later they were committed.

The principal holding of the Supreme Court was in brief:

"The requirements of conforming to fundamental standards of procedure in criminal trials was made operative against the states by the Fourteenth Amendment."

"Where the record showed that the confessions were obtained by means prescribed by the due process clause of the Fourteenth Amendment convictions obtained by use of the confessions could not be sustained."

The next case, that of *White v. Texas*, 310 U. S. 530, was also decided by a unanimous court (Justice Black) and fully affirmed the foregoing case. In this case, defendant was an illiterate farmhand who was arrested without warrant a day after the crime along with fifteen or sixteen Negroes in the vicinity. Defendant was taken to the county jail where he was kept six or seven days. Defendant alleged that on several successive nights he was taken from the jail out into the woods by armed Texas Rangers who whipped

him each time and asked him for a confession. Defendant finally signed a confession after five hours of continual questioning at the time of the detention period. Charges were not filed until after the confession was signed.

Again the court held the evidence clearly showed coercion and the

“confession was obtained and used in such manner that defendant’s trial fell short of the procedural due process guaranty by the constitution.”

In May 1941, a similar case, *Loniak v. Texas*, 513 U. S., 554, was reversed without opinion under authority of the *Chambers* and *White* cases above.

Since the foregoing cases were decided the court has failed to render a unanimous opinion in any later case.

The case of *McNabb v. U. S.*, 216 U. S., 332, was decided March 1, 1943, with Justice Reed dissenting and Justice Frankfurter writing the opinion of the majority. The case involved the murder of a Federal officer and was tried in the Federal court. Principal facts:

On July 31 information was received that McNabb was making untaxed whiskey. Four revenue agents and others that night found the McNabb still and McNabb’s five brothers fled. An officer pursued and was shortly afterwards found dead. Three or four hours later the McNabbs were arrested. They were detained in Chattanooga for fourteen hours and that evening defendants were questioned singly and jointly for about five hours. Questioning was resumed the next morning and that afternoon they confessed. Questioning continued on discrepancies in the various stories until two o’clock Saturday morning, that is, two days after arrest. There was no arraignment as required by Federal law until after the confessions.

The Supreme Court again reiterated that its power over state convictions was limited to the enforcement of the due

process clause of the Fourteenth Amendment but its reviewing power over convictions in Federal courts was "not confined to ascertainment of constitutional validity." It held a confession secured by unlawful restraint and questioning was inadmissible and a conviction based upon it should be set aside. The court observed that the mere fact that a confession is made while the accused is in custody does not render it inadmissible but where it appeared that evidence had been obtained in violation of legal rights the trial court should on motion conduct a hearing on the admissibility of the evidence.

The Federal statutory requirements and those of the state compare closely, 18 U.S.C.A., 595 providing:

"It shall be the duty of the marshal, his deputy, or other officer, who may arrest a person charged with any crime or offense, to take the defendant before the nearest United States Commissioner or the nearest judicial officer having jurisdiction under existing laws for a hearing, commitment, or taking bail for trial * * *"

and further, U.S.C.A., 593:

"The person arrested shall be immediately taken before a committing officer."

Similarly, it is provided in G. C. 13432-3:

"When a peace officer has arrested a person without a warrant, he must without unnecessary delay, take the person arrested before a court or magistrate having jurisdiction of the offense, * * *"

and in G. C. 13432-4:

"A private person who has made an arrest must, without unnecessary delay, take the person arrested before the most convenient court or magistrate."

and in G. C. 13432-19:

"A warrant shall * * * command the officer to whom issued; forthwith, to take the accused and bring him

before the magistrate or court issuing such warrant, or other magistrate of the county having cognizance of the case, * * *"

The court said that "while Congress has not explicitly forbidden the use of evidence so procured, a court should entertain a motion to exclude the evidence." It will be noticed that nowhere in the *McNabb* case does the court attempt to set out the standards or the rules upon which such a motion should be decided. Had it done so it would be possible to give a reasonable application of such standards both in the state and Federal courts. But the situation was left with the Supreme Court undertaking to decide in each specific instance whether the confession obtained by means technically illegal is voluntary or not. This seems to prevent a trial court from taking any assured and safe disposition of the motion to exclude a confession, and is pointed out very clearly by Justice Reed in his dissenting opinion as follows:

"Were the court today saying merely that in its judgment the confessions of the *McNabb* were not voluntary there would be no occasion for this single protest. A notation of dissent would suffice. The opinion, however, does more. Involuntary confessions are not constitutionally inadmissible because violative of the provision of self-incrimination in the Bill of Rights. Now the court leaves undecided whether the present confessions are voluntary or involuntary and declares that the confessions must be excluded because in addition to questioning the petitioners, the arresting officers failed promptly to take them before a committing magistrate. The court finds a basis for the declaration of this new rule of evidence in its supervisory authority over the administration of criminal justice. I question whether this offers to the trial courts and the peace officers a rule of admissibility as clear as the test of the voluntary character of the confession. * * * if these confessions are otherwise voluntary, civilized stand-

ards, in my opinion, are not advanced by setting aside these judgments because of acts of omission which are not shown to have tended toward coercing the admissions."

The case of *Anderson v. U. S.*, 318 U. S. 350, was decided the same day as the *McNabb* case.

Here also was a Federal case but it involved both Federal and State police officers. On April 24 the local sheriff made many arrests including the eight defendants in the case without warrants. The men were not committed. Questioning continued intermittently after which confessions were made by six of the defendants. After confessions, actual arrests were made by Federal police and the prisoners were thereupon immediately arraigned, the confessions being urged by the government in the ultimate trial of the case.

Again a Federal question was involved. Justice Frankfurter again delivered the opinion of the Court and Justice Reed again dissented. This case involved the further point of whether confessions obtained from one defendant in violation of the Federal statute could be used against others. The Court, however, followed the *McNabb* case and stated:

"Since it was error to admit (these confessions,) we see no escape from the conclusion that the convictions of all the petitioners must be set aside."

A year later the Court had occasion to consider the case of *U. S. v. Mitchell*, 322 U. S. 65, which arose in the District of Columbia.

Defendant was taken into custody at 7:00 o'clock October 12 and was taken to the police station. He readily admitted his guilt and directed the police in their search for various items of stolen property. The commitment occurred eight days later. The appellate court reversed a conviction on

authority of the *McNabb* case, holding that the illegal detention rendered the confession inadmissible.

The opinion was written by Justice Frankfurter, with Douglas, Rutledge and Reed concurring in the result although not the reasoning and with Black dissenting. In this case, the statements against interest preceded the illegal detention and thus the Court was enabled to avoid the application of its previous doctrine in the *McNabb* case, stating that:

"their admission, therefore would not be used by the government of the fruits of the wrongdoing of its officers. Being irrelevant, they could be excluded only as punitive measure against unrelated wrong doing by the police."

The Court apparently, therefore, hinges its decision upon the purpose of the illegal detention.

In attempting to formulate a workable rule Reed states in a supplementary opinion:

"As I understand *McNabb v. United States*, as explained by the court's opinion today, the rule is that where there has been illegal detention of a prisoner, *joined with other circumstances which are deemed by his court to be contrary to proper conduct of federal prosecutions, the confession will not be admitted*. Further, this refusal of admission is required even though the detention plus the conduct does not together amount to duress or coercion. * * * In my view detention without commitment is only one factor for consideration in reaching a conclusion as to whether or not a confession is voluntary. * * * If the confession is voluntary it is admissible."

A week subsequent to the *Mitchell* case the Court decided the case of *Ashcraft v. Tennessee*, 322 U. S. 143. This was a State case. Defendant was taken into custody on June 14 and questioned in relays until the morning of June 16, dur-

ing most of which period he had no rest. Defendant's statements during the course of the questioning implicated an individual named Ware who confessed. Arraignment was not had until after both confessions were signed and completed.

For the first time, as to State courts, an attempt was made to formulate a standard of admissibility for confessions obtained during detention, to-wit: its own "independent examination of the defendant's claims, which duty could not have been foreclosed by finding of the court, or verdict of jury, or both." The Court split six to three on the issue with Black writing the opinion of the Court and with Jackson, Roberts and Frankfurter dissenting, but the Court itself did not seem to apply its own rule in this opinion where it is stated:

"Our conclusion is that if Ashcraft made a confession it was not voluntary but compelled. We reach this conclusion from facts which are *not in dispute at all.*"

The minority opinion in the *Ashcraft* case is in serious and complete disagreement with the majority opinion. Justice Jackson states:

"A sovereign state is now before us summoned on the charge that it has obtained convictions by methods so unfair that a federal court must set aside what the state courts have done. Heretofore the state has had the benefit of presumption of regularity and legality. A confession made by one in custody heretofore has been admissible in evidence unless it was provided and found that it was obtained by pressures so strong that it was in fact involuntarily made, that the individual will of the particular confessor had been overcome by torture, mob violence, fraud, trickery, threats, or promises. Even where there was excess and abuse of power on the part of officers, the state still was entitled to use the confession if upon examination of the whole evidence it was found to negative the view of the ac-

cused had so lost his freedom of action that the statements made were not his but were the result of the deprivation of his free choice to admit, to deny, or to refuse to answer."

it is then pointed out that the *Ashcraft* decision determines:

(1) A presumption that the confession is involuntary because examination in custody is inherently coercive;

(2) It makes that presumption irrebuttable because it refuses to resolve conflicts in evidence to determine whether other proof is sufficient to overcome the presumption; and

(3) It sets aside factual findings of the state court to the effect that the confession was voluntary giving to such findings no weight and regarding them as immaterial.

Justice Jackson further points out:

"This court never yet has held that the Constitution denies a state the right to use a confession just because the confessor was questioned in custody where it did not also find other circumstances that deprived him of a free choice to admit or deny or to refuse to answer."

The opinion of the minority insofar as it is concerned with the due process guaranty of the constitution would seem to be infinitely better reasoning in that it would permit the state to apply its own conception of due process as it did in the *Ashcraft* case and would confine the Supreme Court of the United States to the inquiry of whether or not the due process of the state had been violated in the state court, and whether or not the conviction was unsupported by other and sufficient evidence.

The most recent pronouncement of the Supreme Court of the question under consideration is that of *Malinski v. New York*, 324 U. S., 401, decided March 26, 1945. This case involved two petitioners, *Malinski* and *Rudish*, wherein a

confession by Malinski implicated himself and Rudish. In the use of the Malinski confession upon trial Rudish was referred to by letter X. Malinski, Rudish and Indovlono were arrested October 23, 1942, at 8:00 a. m. Malinski was taken to a hotel, stripped and kept naked until about 11:00 a. m. at which time he was allowed shoes, socks, underwear and a blanket. He remained that way until about 6:00 p. m. There was conflict as to whether he was beaten during this period. He was visited by a friend from Sing Sing Friday afternoon and after a private conference with the convict he confessed, after which he was allowed to put on the balance of his clothes, but was held at the hotel for an additional three days during which time there were various periods of questioning and several trips to identify elements of evidence in the case.

On October 27 about 2:00 a. m. he made an additional confession at the police station whereupon he was booked and arraigned. Only the second confession, of October 27, was introduced at the trial.

Rudish was tried jointly with Malinski—his counsel not asking for a severance. Malinski's confession of October 27 implicated Rudish. In the confession upon trial Rudish was referred to by an X under instructions from the court.

In affirming the judgment as to Rudish, the court observed that the questions raised in respect to him involved matters of state procedure beyond our province to review and that the case against him was not dependent upon Malinski's confession of October 27.

Again the court was in marked disagreement,—the judgment against Rudish being affirmed and that against Malinski being reversed and remanded. Justice Frankfurter was of the opinion that the judgment as to Rudish should also be remanded. Justice Rutledge was of the

opinion that the judgment against Rudish should be reversed and Justice Murphy concurred with Justice Rutledge. Justices Stone, Roberts, Reed and Jackson were in accord in holding that the judgment should be affirmed as to both of the accused. *Since the Malinski case is a state case and since it is the latest expression on a confusing line of decisions, it would seem desirable to use that case as a summary of the principles now recognized by the Supreme Court on the question of confessions and due process.*

The court states, in regard to a co-defendant who is implicated in an involuntary confession, that where:

“the conviction of the particular defendant did not rely on the confession there was no substantial federal question to review even if the confession was involuntary.”

and further, where the confession was involuntary, as a matter of fact to be deduced from an examination of the record, the

“conviction in a state court would be set aside as a denial of due process of law,”

the question for the court's determination being:

“Whether the defendant was deprived of the due process of law by which he was constitutionally entitled to have his guilt determined.”

The view previously expressed in the *Ashcraft* case as to the function of the Supreme Court on this question is reiterated in the following words:

“Judicial review of the guaranty of due process imposes an exercise of judgment upon the whole course of the proceedings to ascertain whether they offend these canons of decency and fairness which express the notions of justice of English-speaking peoples . . .”

The court further recognizes that some weight is to be given to a previous determination of due process by the state courts in the following words:

"An important safeguard against such merely individual judgment is an alert deference to the judgment of the state court under review but there cannot be blind acceptance even of such weighty judgment."

And the court closes by again confirming the established doctrine that its review is limited to a consideration of the Fourteenth Amendment when it states that:

"The Federal Supreme Court must subject the convictions from state courts to the very narrow scrutiny which the due process clause of the Fourteenth Amendment authorizes."

If the situation as resolved in the *Malinski* case can be logically and briefly summarized, it might be done as follows:

(1) That a conviction will not be set aside even if an involuntary confession is coupled with a denial of due process when it can be sustained without the use of the coercive confession;

(2) The court reserves the right to make its own independent determination of whether or not there has been a denial of due process under the Fourteenth Amendment in any case where a conviction is based solely upon such a denial;

(3) The judgment of the state court on this question will be given due deference but not *prima facie* acceptance; and

(4) The power of review of the Supreme Court in a state case arises solely by virtue of the Fourteenth Amendment.

If these principles be accepted as the present view of the court majority, the minority of four still dissents strongly as to the proper function of the court. Justice Stone states in the dissenting opinion in the *Malinski* case:

"It is not the function of the court, in reviewing on constitutional grounds criminal convictions by state courts, to weigh the evidence or to sit as a super-jury. We have set aside state convictions where the case was improperly submitted to the jury, or where the unchallenged evidence plainly showed a violation of due process, but we have not hitherto overturned the verdict of a state court jury by weighing the conflicting evidence on which it was based."

Subsequent to the decision of the United States Supreme Court in the *Ashcraft* case, but prior to its decision of the *Malinski* case, Judge Hornbeck writing for the Court of Appeals for Fayette county, Ohio, decided the case of *State v. Collet*, 58 N. E. (2d) 417, in which the issues raised by the decisions of the Supreme Court up to that time were considered. The facts were briefly:

Defendant was arrested on November 30 without a warrant and placed in the county jail. He was requested on that day to submit to a "lie detector test." Early the next morning about 2:00 a. m. he was driven to Toledo where he took the test. He was questioned intermittently through the day and confessed about 5:30 p. m. on Friday evening. Defendant was formally charged before a justice of the peace on December 4.

On the factual proposition as to whether or not the confession involved was voluntary, the court found some conflict in the evidence. The trial judge conducted a hearing without the jury and with full testimony on the question of the admissibility of the confession. As a result of such hearing it was determined that the confession was admissi-

ble. The court then proceeded to discuss the Ohio law only and found it to be that:

"The confession must be held to be voluntary under the evidence in the light of the verdict and the judgment returned."

the test to be applied being:

- (1) Where violence, threats or promises used or made, and
- (2) The effect of such acts upon the free will of the defendant.

The court concluded on this point that if notwithstanding violence, threats or promises:

"It fairly appears that he voluntarily admitted the commission of a crime, such confession is admissible against him."

The court then proceeds to consider the effect, if any, of the *McNabb*, *Anderson*, *Mitchell* and *Ashcraft* cases upon this rule. The court notes the distinguishing feature of *McNabb*, *Anderson* and *Mitchell* cases as being federal cases and subject to federal rules of evidence.

The court, however, observes that in the *Mitchell* case, where a decision based on the *McNabb* case was reversed, that:

"The mere fact that a confession was made while in custody of the police does not render it inadmissible."

Judge Hornbeck accordingly finds this as the essential question to be determined:

"What effect, as a matter of fact, did the delay in the arraignment of the prisoner have in bringing about the confession."

The judge further stated in regard to the *Ashcraft* case:

"That the facts do not so closely parallel those in this case as to require us to say, as a matter of law, that the confessions here were secured in violation of the Fourteenth Amendment."

It is then pointed out that the *Ashcraft* case did not overrule *Lisenba v. California* where the Supreme Court of the United States held that the Fourteenth Amendment permits the state to adopt a rule for determining the admissibility of confessions provided the rule does not foreclose an inquiry as to whether its application works a deprivation of due process.

In the case at bar the mere fact that this confession was made while in custody of the police does not render it inadmissible. Taking the hour most unfavorable to the state's case, it can safely be said that by seven o'clock in the morning Haley's confession was completed. At that time it was either a voluntary confession or an involuntary one, and it was either good or bad as of that hour. There is nothing in this record to support any theory or claim that Haley was denied counsel before the confession was signed, sealed and delivered in that particular early morning hour. The sole question then remaining was whether or not the confession was obtained by force or violence, coercion or putting in fear.

Upon the question of force or violence the trial court measured the evidence by the Ohio rule and standard, and measured by that standard determined with the aid and help and the finding of a jury, that this confession was admissible; that it was not obtained by force or violence, coercion or the putting in fear.

Nowhere in all of the cases of the Supreme Court of the United States bearing upon this question has this Court ever overruled a doctrine of *Lisenba v. California*, wherein

this court held that the Fourteenth Amendment permits the State to adopt a rule for determining the admissibility of confessions, providing the rule does not foreclose an inquiry as to whether its application works a deprivation of due process.

We are satisfied that this Court, from an examination of the record and the authorities cited, will determine and can come to no other conclusion than that the Ohio rule for determining the admissibility of confessions is a fair one, and that that rule was fully and completely complied with and that that rule does not foreclose an inquiry as to whether its application works a deprivation of due process; and that that inquiry having now been made by this Court there was in this particular case no deprivation of due process, and the verdict of the trial jury should be sustained.

Respectfully submitted,

D. DEANE McLAUGHLIN,

Prosecuting Attorney;

W. BERNARD RODGERS,

Assistant Prosecuting Attorney;

JOHN ROSETTI,

Assistant Prosecuting Attorney,

Counsel for Respondent.

(3499)

Frankfurter } pp. 2, 5, 6,

SUPREME COURT OF THE UNITED STATES

No. 51.—OCTOBER TERM, 1947.

John Harvey Haley, Petitioner, } On Writ of Certiorari to
v. } the Supreme Court of
The State of Ohio. } the State of Ohio.

[January 12, 1948.]

MR. JUSTICE DOUGLAS announced the judgment of the Court and an opinion in which MR. JUSTICE BLACK; MR. JUSTICE MURPHY, and MR. JUSTICE RUTLEDGE join.

Petitioner was convicted in an Ohio court of murder in the first degree and sentenced to life imprisonment. The Court of Appeals of Ohio sustained the judgment of conviction over the objection that the admission of petitioner's confession at the trial violated the Fourteenth Amendment of the Constitution. 79 Ohio App. 237. The Ohio Supreme Court, being of the view that no debatable constitutional question was presented, dismissed the appeal. 147 Ohio St. 340. — The case is here on a petition for a writ of certiorari which we granted because we had doubts whether the ruling of the court below could be squared with *Chambers v. Florida*, 309 U. S. 227, *Malinski v. New York*, 324 U. S. 401, and like cases in this Court.

A confectionery store was robbed near midnight on October 14, 1945, and William Karam, its owner, was shot. It was the prosecutor's theory, supported by some evidence which it is unnecessary for us to relate, that petitioner, a Negro boy age 15, and two others, Willie Lowder, age 16, and Al Parks, age 17, committed the crime, petitioner acting as a lookout. Five days later—around midnight October 19, 1945—petitioner was arrested at his home and taken to police headquarters.

There is some contrariety in the testimony as to what then transpired. There is evidence that he was beaten. He took the stand and so testified. His mother testified

that the clothes he wore when arrested, which were exchanged two days later for clean ones she brought to the jail, were torn and blood-stained. She also testified that when she first saw him five days after his arrest he was bruised and skinned. The police testified to the contrary on this entire line of testimony. So we put to one side the controverted evidence. Taking only the undisputed testimony (*Malinski v. New York, supra*, p. 404 and cases cited), we have the following sequence of events. Beginning shortly after midnight this 15-year old lad was questioned by the police for about five hours. Five or six of the police questioned him in relays of one or two each. During this time no friend or counsel of the boy was present. Around 5 a. m.—after being shown alleged confessions of Lowden and Parks—the boy confessed: A confession was typed in question and answer form by the police. At no time was this boy advised of his right to counsel; but the written confession started off with the following statement:

"we want to inform you of your constitutional rights, the law gives you the right to make this statement or not as you see fit. It is made with the understanding that it may be used at a trial in court either for or against you or anyone else involved in this crime with you, of your own free will and accord, you are under no force or duress or compulsion and no promises are being made to you at this time whatsoever.

"Do you still desire to make this statement and tell the truth after having had the above clause read to you?

"A. Yes."

He was put in jail about 6 or 6:30 a. m. on Saturday, the 20th, shortly after the confession was signed. Between then and Tuesday, the 23d, he was held incommunicado. A lawyer retained by his mother tried to see

him twice but was refused admission by the police. His mother was not allowed to see him until Thursday, the 25th. But a newspaper photographer was allowed to see him and take his picture in the early morning hours of the 20th, right after he had confessed. He was not taken before a magistrate and formally charged with a crime until the 23d—three days after the confession was signed.

The trial court, after a preliminary hearing on the voluntary character of the confession, allowed it to be admitted in evidence over petitioner's objection that it violated his rights under the Fourteenth Amendment. The court instructed the jury to disregard the confession if it found that he did not make the confession voluntarily and of his free will.

But the ruling of the trial court and the finding of the jury on the voluntary character of the confession do not foreclose the independent examination which it is our duty to make here. *Ashcraft v. Tennessee*, 322 U. S. 143, 147-148. If the undisputed evidence suggests that force or coercion was used to exact the confession, we will not permit the judgment of conviction to stand even though without the confession there might have been sufficient evidence for submission to the jury. *Malinski v. New York*, *supra*, p. 404, and cases cited.

We do not think the methods used in obtaining this confession can be squared with that due process of law which the Fourteenth Amendment commands.

What transpired would make us pause for careful inquiry if a mature man were involved. And when, as here, a mere child—an easy victim of the law—is before us, special care in scrutinizing the record must be used. Age 15 is a tender and difficult age for a boy of any race. He cannot be judged by the more exacting standards of maturity. That which would leave a man cold and unimpressed can overawe and overwhelm a lad in his

early teens. This is the period of great instability which the crisis of adolescence produces. A 15-year old lad, questioned through the dead of night by relays of police, is a ready victim of the inquisition. Mature men possibly might stand the ordeal from midnight to 5 a. m. But we cannot believe that a lad of tender years is a match for the police in such a contest. He needs counsel and support if he is not to become the victim first of fear, then of panic. He needs someone on whom to lean lest the overpowering presence of the law, as he knows it, may not crush him. No friend stood at the side of this 15-year old boy as the police, working in relays, questioned him hour after hour, from midnight until dawn. No lawyer stood guard to make sure that the police went so far and no farther, to see to it that they stopped short of the point where he became the victim of coercion. No counsel or friend was called during the critical hours of questioning. A photographer was admitted once this lad broke and confessed. But not even a gesture towards getting a lawyer for him was ever made.

This disregard of the standards of decency is underlined by the fact that he was kept incommunicado for over three days during which the lawyer retained to represent him twice tried to see him and twice was refused admission. A photographer was admitted at once; but his closest friend—his mother—was not allowed to see him for over five days after his arrest. It is said that these events are not germane to the present problem because they happened after the confession was made. But they show such a callous attitude of the police towards the safeguards which respect for ordinary standards of human relationships compels that we take with a grain of salt their present apology that the five-hour grilling of this boy was conducted in a fair and dispassionate manner. When the police are so unmindful of

these basic standards of conduct in their public dealings, their secret treatment of a 15-year old boy behind closed doors in the dead of night becomes darkly suspicious.

The age of petitioner, the hours when he was grilled, the duration of his quizzing, the fact that he had no friend or counsel to advise him, the callous attitude of the police towards his rights combine to convince us that this was a confession wrung from a child by means which the law should not sanction. Neither man nor child can be allowed to stand condemned by methods which flout constitutional requirements of due process of law.

But we are told that this boy was advised of his constitutional rights before he signed the confession and that, knowing them, he nevertheless confessed. That assumes, however, that a boy of fifteen, without aid of counsel, would have a full appreciation of that advice and that on the facts of this record he had a freedom of choice. We cannot indulge those assumptions. Moreover, we cannot give any weight to recitals which merely formalize constitutional requirements. Formulas of respect for constitutional safeguards cannot prevail over the facts of life which contradict them. They may not become a cloak for inquisitorial practices and make an empty form of the due process of law for which free men fought and died to obtain.

The course we followed in *Chambers v. Florida*, *supra*, *White v. Texas*, 310 U. S. 530, *Ashcraft v. Tennessee*, *supra*, and *Malinski v. New York*, *supra*, must be followed here. The Fourteenth Amendment prohibits the police from using the private, secret custody of either man or child as a device for wringing confessions from them.

Reversed.

SUPREME COURT OF THE UNITED STATES

No. 51.—OCTOBER TERM, 1947.

John Harvey Haley, Petitioner,	} On Writ of Certiorari to	
v.		the Supreme Court of
The State of Ohio.		the State of Ohio.

[January 12, 1948.]

MR. JUSTICE FRANKFURTER, joining in reversal of judgment.

In a recent series of cases, beginning with *Brown v. Mississippi*, 297 U. S. 278, the Court has set aside convictions coming here from State courts because they were based on confessions admitted under circumstances that offended the requirements of the "due process" exacted from the States by the Fourteenth Amendment. If the rationale of those cases ruled this, we would dispose of it *per curiam* with the mere citation of the cases. They do not rule it. Since at best this Court's reversal of a State court's conviction for want of due process always involves a delicate exercise of power and since there is a sharp division as to the propriety of its exercise in this case, I deem it appropriate to state as explicitly as possible why, although I have doubts and difficulties, I cannot support affirmance of the conviction.

The doubts and difficulties derive from the very nature of the problem before us. They arise frequently when this Court is obliged to give definiteness to "the vague contours" of Due Process or, to change the figure, to spin judgment upon State action out of that gossamer concept. Subtle and even elusive as its criteria are, we cannot escape that duty of judicial review. The nature of the duty, however, makes it especially important to be humble in exercising it. Humility in this context means an alert self-scrutiny so as to avoid infusing into the vagueness of a Constitutional command one's merely private notions.

Like other mortals, judges, though unaware, may be in the grip of prepossessions. The only way to relax such a grip, the only way to avoid finding in the Constitution the personal bias one has placed in it, is to explore the influences that have shaped one's unanalyzed views in order to lay bare prepossessions.

A lifetime's preoccupation with criminal justice, as prosecutor, defender of civil liberties and scientific student, naturally leaves one with views. Thus, I disbelieve in capital punishment. But as a judge I could not impose the views of the very few States who through bitter experience have abolished capital punishment upon all the other States, by finding that "due process" proscribes it. Again, I do not believe that even capital offenses by boys of fifteen should be dealt with according to the conventional criminal procedure. It would, however, be bald judicial usurpation to hold that States violate the Constitution in subjecting minors like Haley to such a procedure. If a State, consistently with the Fourteenth Amendment, may try a boy of fifteen charged with murder by the ordinary criminal procedure, I cannot say that such a youth is never capable of that free choice of action which, in the eyes of the law, makes a confession "voluntary."

→ Again, it would hardly be a justifiable exercise of judicial power to dispose of this case by finding in the Due Process Clause constitutional outlawry of the admissibility of all private statements made by an accused to a police officer however much legislation to that effect might seem to me wise. See The Indian Evidence Act of 1872, § 25; cf. § 26.

to detach themselves from their merely private views. (It is noteworthy that while American experience has been drawn upon in the framing of constitutions for

other democratic countries, the Due Process Clause has not been copied. See, also, the illuminating debate on the proposal to amend the Irish Home Rule Bill by incorporating our Due Process Clause. 42 H. C. Deb. 2082-2091, 2215-2267 (5th ser. 1912.)

While the issue thus formulated appears vague and impalpable, it cannot be too often repeated that the limitations which the Due Process Clause of the Fourteenth Amendment placed upon the methods by which the States may prosecute for crime cannot be more narrowly conceived. This Court must give the freest possible scope to States in the choice of their methods of criminal procedure. But these procedures cannot include methods that may fairly be deemed to be in conflict with deeply rooted feelings of the community. See concurring opinions in *Malinski v. New York*, 324 U. S. 401, 412, and *Louisiana ex rel. Francis v. Resweber*, 329 U. S. 459, 466. Of course this is a most difficult test to apply, but apply it we must, warily, and from case to case.

This brings me to the precise issue on the record before us. Suspecting a fifteen-year-old boy of complicity in murder resulting from attempted robbery, at about midnight the police took him from his home to police headquarters. There he was questioned for about five hours by at least five police officers who interrogated in relays of two or more. About five o'clock in the morning this procedure culminated in what the police regarded as a confession, whereupon it was formally reduced to writing. During the course of the interrogation the boy was not advised that he was not obliged to talk, that it was his right if he chose to say not a word, nor that he was entitled to have the benefit of counsel or the help of his family. Bearing upon the safeguards of these rights, the Chief of Police admitted that while he knew that the boy "had a right to remain mute and not answer any questions" he did not know that it was the duty of the police to apprise

him of that fact. Unquestionably, during this whole period he was held incommunicado. Only after the night-long questioning had resulted in disclosures satisfactory to the police and as such to be documented, was there read to the boy a clause giving the conventional formula about his constitutional right to make or withhold a statement and stating that if he makes it, he makes it of his "own free will." Do these uncontested facts justify a State court in finding that the boy's confession was "voluntary," or do the circumstances by their very nature preclude a finding that a deliberate and responsible choice was exercised by the boy in the confession that came at the end of five hours questioning?

The answer, as has already been intimated, depends on an evaluation of psychological factors, or, more accurately stated, upon the pervasive feeling of society regarding such psychological factors. Unfortunately, we cannot draw upon any formulated expression of the existence of such feeling. Nor are there available experts on such matters to guide the judicial judgment. Our Constitutional system makes it the Court's duty to interpret those feelings of society to which the Due Process Clause gives legal protection. Because of their inherent vagueness the tests by which we are to be guided are most unsatisfactory, but such as they are we must apply them.

The Ohio courts have in effect denied that the very nature of the circumstances of the boy's confession precludes a finding that it was voluntary. Their denial carries great weight, of course. It requires much to be overborne. But it does not end the matter. Against it we have the judgment that comes from judicial experience with the conduct of criminal trials as they pass in review before this Court. An impressive series of cases in this and other courts admonishes of the temptations to abuse of police endeavors to secure confessions from suspects, through protracted questioning, carried on in secrecy, with

the inevitable disquietude and fears police interrogations naturally engender in individuals questioned while held incommunicado, without the aid of counsel and unprotected by the safeguards of a judicial inquiry. Disinterested zeal for the public good does not assure either wisdom or right in the methods it pursues. A report of President Hoover's National Commission on Law Observance and Enforcement gave proof of the fact, unfortunately, that these potentialities of abuse were not the imaginings of mawkish sentimentality, nor their tolerance desirable or necessary for a stern policy against crime. Legislation throughout the country reflects a similar belief that detention for purposes of eliciting confessions through secret, persistent, long-continued interrogation violates sentiments deeply embedded in the feelings of our people. See *McNabb v. United States*, 318 U. S. 332, 342-43.

It is suggested that Haley's guilt could easily have been established without the confession elicited by the sweating process of the night's secret interrogation. But this only affords one more proof that in guarding against misuse of the law enforcement process the effective detection of crime and the prosecution of criminals are furthered and not hampered. Such constitutional restraints of decency derive from reliance upon the resources of intelligence in dealing with crime and discourage the too easy temptations of unimaginative crude force, even when such force is not brutally employed. ~~(It is significant to note that since 1872 no confession made by an accused to a police officer has been admissible against him in Indian criminal proceedings. See The Indian Evidence Act of 1872, § 25, cf. § 26.)~~

It would disregard standards that we cherish as part of our faith in the strength and well-being of a rational, civilized society to hold that a confession is "voluntary" simply because the confession is the product of a sentient

choice. "Conduct under duress involves a choice." *Union Pacific R. Co. v. Public Service Commission*, 248 U. S. 67, 70, and conduct devoid of physical pressure but not leaving a free exercise of choice is the product of duress as much so as choice reflecting physical constraint.

Unhappily we have neither physical nor intellectual weights and measures by which judicial judgment can determine when pressures in securing a confession reach the coercive intensity that calls for the exclusion of a statement so secured. Of course, the police meant to exercise pressures upon Haley to make him talk. That was the very purpose of their procedure. In concluding that the pressures that were exerted in this case to make a lad of fifteen talk when the Constitution gives him the right to keep silent, and when the situation was so contrived that appreciation of his rights and thereby the means of asserting them were effectively withheld from him by the police, I do not believe I express a merely personal bias against such a procedure. Such a finding, I believe, reflects those fundamental notions of fairness and justice in the determination of guilt or innocence which lie embedded in the feelings of the American people and are enshrined in the Due Process Clause of the Fourteenth Amendment. To remove the inducement to resort to such methods this Court has repeatedly denied use of the fruits of illicit methods.

Accordingly, I think Haley's confession should have been excluded and the conviction based upon it should not stand.

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SUPREME COURT OF THE UNITED STATES

No. 51.—OCTOBER TERM, 1947.

John Harvey Haley, Petitioner, | On Writ of Certiorari to
v. | the Supreme Court of
The State of Ohio. | the State of Ohio.

[January 12, 1948.]

MR. JUSTICE BURTON, with whom THE CHIEF JUSTICE, MR. JUSTICE REED and MR. JUSTICE JACKSON concur, dissenting.

The issue here is a narrow one of fact turning largely upon the credibility of witnesses whose testimony on material points is in direct conflict with that of other witnesses. The judgment rendered today by this Court does not hold that the procedure authorized by the State of Ohio to determine the admissibility of the confession of a person accused of a capital offense violates *per se* the Due Process Clause of the Fourteenth Amendment. It holds merely that the application made of that procedure in this case amounted to a violation of due process under the Fourteenth Amendment in that, on this record, it amounted to a refusal by the trial court to exclude from the jury this particular confession which this Court is convinced was an involuntary confession.

The following facts are not disputed:

About midnight, on October 14, 1945, a storekeeper in Canton, Ohio, was shot to death in his store by one of two boys, Alfred Parks, aged 16, or Willie Lowder, aged 17. The accused, John Harvey Haley, then about 15 years and 8 months old and a senior in high school, was with these boys before they went into the store and was waiting for them outside of it at the time when the shooting occurred. Haley testified "all of a sudden I heard a shot and a man hollered, and I was scared and I ran." The two other boys also ran away immediately.

after the shot was fired. The three soon met and Haley then went home. These boys had been together all that evening. Early in the evening, while Parks and Lowder waited outside of Haley's home, Haley went in to get a pistol for their joint use. Without the knowledge of William Mack, the owner of the pistol, Haley took from a trunk a .32 caliber automatic pistol which Haley had shot once on New Year's Day and, from another place in his home, a handful of ammunition for the pistol. The three boys took part in loading it. Haley then turned it over to Parks and Lowder, one or the other of whom thereafter retained possession of it throughout the evening. A day or two after the shooting, Haley asked the two boys what they had done with the gun. He testified that in answer "They said they got rid of it." This much of the story Haley testified to at the trial and has admitted substantially ever since his arrest and since abandoning his first, and admittedly false, statement that he and his two friends had gone to a show that evening. A .32 caliber automatic Colt pistol, the admission of which in evidence is not here in issue, was sent by the Canton police to the Federal Bureau of Investigation for identification, together with the bullet which killed the storekeeper and a cartridge shell found by the police at the scene of the crime. An uncontradicted expert witness from the F. B. I. fired three bullets from the pistol, compared the microscopic markings on them with those on the bullet which had killed the storekeeper and, on this basis, positively identified the pistol as the weapon which had fired the fatal shot. This fatal shot admittedly was fired while Parks and Lowder were in the store of the deceased and were in possession of the pistol with which Haley had supplied them. There is nothing in the record to suggest the presence in the store of any other pistol. Haley testified that this pistol "looked like" the one he had given to his companions.

After hearing the foregoing and other material evidence, including the disputed confession of Haley, the jury found him guilty of murder in the first degree while attempting to perpetrate robbery. The verdict carried a recommendation of mercy which automatically reduced the statutory penalty from death to life imprisonment. In considering the record as a whole, and particularly in reaching a conclusion of fact that the police officers who examined Haley coerced him into making his confession, it is appropriate to note that the foregoing undisputed facts left comparatively little need for such a confession as was signed by Haley. That confession, in substance, added only the express statement by Haley that he knew that Parks and Lowder went into the store to rob the storekeeper and that Haley remained outside to serve as a lookout and to warn Parks and Lowder by tapping on the window in case anyone approached.

The procedure followed by the police as soon as they had the information upon which they arrested Haley was substantially as follows:

On Friday, October 19, 1945, again at about midnight, and while Haley was still up and about his home, after having returned from an evening football game, he was arrested by four policemen who came to his home in two cars. They were admitted to Haley's home by his mother and they took him with them to police headquarters, not using handcuffs. He was "booked" there at about 12:30 a. m. From then until between 3 and 4 a. m. he was in the record room of the detective bureau, usually with two officers. What took place there leading up to his oral, and later signed, confession is the subject of directly contradictory testimony given by the accused and the police. Haley testified that he was roughly handled in such a manner that if this testimony is believed the confession was not voluntary. On the other hand, the police and everyone else who was present or saw

Haley during or after this examination testified in detail and with positiveness, that Haley was not abused or roughly handled in any degree and that his person and clothes presented a normal appearance after the examination. Immediately after Haley had been shown alleged confessions by Parks and Lowder and had read at least that by Parks, Haley made an oral statement evidently similar to that made by Parks. Thereupon, Haley was taken to a front room where a sergeant of detectives typed Haley's confession in question and answer form during a period which consumed from one hour to an hour and a half. Before taking this confession the sergeant testified that he typed and read to Haley, clearly and distinctly, the preliminary statement, a part of which is quoted in this Court's opinion as being at the beginning of the written confession.. The sergeant testified that Haley, after hearing this introduction, said that he still desired to make a statement and tell the truth. When completed, the statement, so prepared, was signed by Haley in the presence not only of some of the police officers who had questioned him but also of two civilian witnesses called in for that purpose from outside of police headquarters. The Acting Chief of Police, who himself was a member of the Bar of Ohio, requested Haley to read the entire confession. When this had been done, the Acting Chief of Police, in the capacity of a notary public, administered the oath signed by Haley at the end of the confession, stating that the facts contained therein were true and correct as Haley verily believed. A newspaper photographer then took a picture of Haley in company with Parks and Lowder. Either then or on the following Monday, the date being disputed, Haley was taken back to his home where the police found the trunk described by him as that from which he had taken the pistol. After his confession he was placed in the city jail and, on the following Tuesday, October 23, he was removed to the county

jail. On that day, a complaint was filed in the Court of Common Pleas of Stark County, Ohio, Division of Domestic Relations, Juvenile Department, by a sergeant of police, charging Haley with being a delinquent child.

On October 29, 1945, pursuant to a motion of the prosecuting attorney, the judge assigned to the above-mentioned Domestic Relations Division of the Court of Common Pleas appointed a doctor to make a physical and mental examination of the accused.

On November 1, 1945, the mental and physical examination was filed and, after hearing, the court found—

"that the said child has committed an act which, if [it] had been committed by an adult, would be a felony; an examination having been made of the said John Haley by a competent physician, qualified to make such examination, it is ordered that the said John Haley shall personally be and appear before the Court of Common Pleas on the first day of the next term thereof to answer for such act."

On November 14, 1945, a transcript from the docket of the above-mentioned Juvenile Court was filed in the Court of Common Pleas. Thereafter, beginning with an indictment for first degree murder which was returned on January 8, 1946, the case proceeded to arraignment on January 11, and to trial in the Court of Common Pleas March 25—April 3, when a verdict of guilty as charged was returned, with a recommendation of mercy. A motion for a new trial was overruled and the case was appealed to the Court of Appeals for Stark County, Ohio, and there was unanimously affirmed October 25, 1946. Appeal was made, both on a motion for leave to appeal and as a matter of right, to the Supreme Court of Ohio. The motion for leave to appeal was overruled and the appeal, as a matter of right, was dismissed by unanimous action of the five judges sitting in the case. The reason

given for dismissal was that the court found that no debatable constitutional question was involved in the case.¹

Beginning with the arraignment of the accused, the record shows that Haley has been represented by counsel. The case has proceeded in this Court *in forma pauperis*, the accused being represented by the same competent counsel who represented him in the state courts. It does not appear that the accused ever asked to have counsel appointed for him. It does not appear that, at any time before his arraignment, he employed counsel or asked for counsel to represent him. The nearest approach to such action is that disclosed by the testimony of Haley's mother and by a stipulation between the parties that Leroy Contie, an attorney, on Monday, October 22, was employed by Mrs. Haley to represent her son. Mr. Contie went to the city jail on two occasions after Haley's confession was signed, was unable to see him and was refused admission by the police authorities. Mr. Contie did not see Haley until after the latter had been transferred to the county jail, some days after that. He apparently did not become an attorney of record in the case.

It is not disputed on Haley's behalf that his arrest and uncoercive questioning after his arrest would have been

¹ It appears from the opinion of the Court of Appeals for Stark County in this case that the three boys were separately indicted and tried. Lowder and Haley were tried by juries. Parks waived that right and was tried before three judges. Each was convicted of murder in the first degree, with a recommendation of mercy. Appeals from the three cases were heard together and the judgments were affirmed in each with a single opinion emphasizing the separate consideration that had been given to each. *Ohio v. Lowder*, *Ohio v. Haley*, *Ohio v. Parks*, 79 Ohio App. 237, 34 O. O. 568, 72 N. E. 2d 785. See also, *Ohio v. Haley*, 147 Ohio St. 340, 70 N. E. 2d 905; *Ohio v. Lowder*, 147 Ohio St. 530, 72 N. E. 2d 102; *Ohio v. Parks*, 147 Ohio St. 531, 72 N. E. 2d 81; where each appeal was dismissed for lack of a debatable constitutional question.

proper under such circumstances. While the constitutional and statutory rights of the accused, under such circumstances, must be safeguarded carefully, it is equally clear that serious constitutional and statutory obligations rest upon law enforcement officers to discover promptly those guilty of such an unprovoked murder as had been committed. Likewise, the comparative youth of these three boys who now have been convicted of this murder is entitled to full recognition in considering the constitutionality of the process of law that has been applied to them. This has been done. Haley's youth was recognized expressly by the preliminary proceedings before the Juvenile Department of the Division of Domestic Relations of the local court. Those proceedings markedly differentiated the procedure from that ordinarily followed in the case of an adult. Undoubtedly the thought of Haley's youth was reflected in the jury's recommendation of mercy, and in the care which the sergeant and the Acting Chief of Police testified that they took in preparing his confession for signature and in seeing to it that Haley understood it and his rights in connection with it. It is necessary to recognize, on the other hand, that the offense here charged was not an ordinary juvenile offense. It was a capital offense of the most serious kind. It involved the same fatal consequence to a law-abiding citizen of Canton as would have been the case if it had been committed by adult offenders. An obligation rests upon the police not only to discover the perpetrators of such a crime but also to determine, as promptly as possible, their guilt or innocence to a degree sufficient to justify their prosecution or release. It is common knowledge that many felonies are being committed currently by minors and an obligation attaches to law enforcement officials to punish, prevent and discourage such conduct by minors as well as by adults. If Haley's part in this

crime had been reasonably suspected by the police immediately after its commission at midnight, October 14, the police would have deserved severe criticism if they had not arrested and questioned him that night. The same obligation rested on them, five days later, at midnight, October 19.

As admitted by the petitioner in this Court, the entire issue here resolves itself into a consideration of the methods used in obtaining the confession. This in turn resolves itself primarily into a question of the credibility of witnesses as a means of determining the contested question as to what methods in fact were used. A voluntary confession not only is valid but it is the usual, best and generally fairest kind of evidence. Often it is the only direct evidence obtainable as to the state of mind of the accused. The giving of such a confession promptly is to be encouraged in the interest of all concerned. The police are justified and under obligation to seek such confessions. At the same time, it is a primary part of their obligation to see to it that coercion, including intimidation, is not used to secure a confession. It should be evident to them not only that involuntary confessions are worthless as evidence, but that coercion applied in securing them itself constitutes a serious violation of duty.

The question in this case is the simple one—was the confession in fact voluntary? As in many other cases it is difficult, because of conflicting testimony, to determine this controlling fact. It may not be possible to become absolutely certain of it. Self-serving perjury, however, must not be the pass-key to a mandatory exclusion of the confession from use as evidence. It is for the trial judge and the jury, under the safeguards of constitutional due process of criminal law, to apply even-handed justice to the determination of the factual issues. To do this, they need every available lawful aid

to help them test the credibility of the conflicting testimony.

Due process of law under the Fourteenth Amendment requires that the states use some fair means to determine the voluntary character of a confession like that in this case. The procedure may differ in each state. The form adopted by Ohio is not criticized by this Court. The sole question here is the validity of the application of the Ohio procedure to the facts of this case. That application can be tested in this Court only under the great handicap of attempting to appraise, by use of the printed record, the action of the trial court and jury taken in the light of the living record. In connection with every confession that is unaccompanied by testimony as to how it was secured, all sorts of conditions may be conjectured as to the methods used to secure it. To rely upon conjecture, either in favor of or against the accused, is not justice. It is not due process of law by any definition. Similarly, all sorts of conditions as to the methods which might have been used in obtaining such a confession may be conjectured by a witness and falsely testified to by him. Such action puts the true testimony into direct conflict with the false. In the present case, the conflict of testimony is so clear that it is evident that one or more of the witnesses must have committed perjury. The issue resolves itself, therefore, not into one of civil rights but into one of the truth or falsity of the testimony as to the methods used in obtaining Haley's confession. This issue of credibility cannot be resolved here with nearly as good a chance of determining the truth as that which was enjoyed by the trial court and jury. They saw and heard the witnesses and they examined the exhibits. Furthermore, they and the State Appellate and Supreme Courts also were familiar with the general conditions and standards of law enforcement in effect in the

long-established industrial civic center of over 100,000 people of Canton, Ohio, where this confession was made and used. The testimony of the witnesses as to the methods used should be read in the context of the community where such testimony was given in order for it to be fairly appraised. There is no suggestion that racial discrimination or prejudice existed in the attitude of any of the witnesses, or of the courts or of the community of Canton. The issue is the credibility of these particular police officers and other local witnesses. It cannot be determined on the basis of published reports, however authentic, of police methods in other communities in other years. "The mere fact that a confession was made while in the custody of the police does not render it inadmissible." *McNabb v. United States*, 318 U. S. 332, 346.

The present case, turning as it does upon the credibility of the testimony as to the existence of the coercion, if any, that was used to secure the confession, is readily distinguishable from cases relied upon by the accused. For example, in the present case, this Court does not rely on any claim that the confession was elicited by unreasonably delaying the arraignment of the accused or even by any alleged delay in charging him with delinquency in the Juvenile Court. The confession of the accused was given, transcribed and signed by 5:30 a. m. on October 20, immediately following his arrest at about midnight. There is, accordingly, no basis for contending that there was unnecessary delay in taking the accused before a court or magistrate having jurisdiction of the offense insofar as such unnecessary delay, if any, had relation to the confession. Whatever delay there was occurred after the confession was made and it is obvious that it was not unreasonable to delay the taking of the accused before a court or magistrate at least until after 5:30 a. m. *United States v. Mitchell*, 322 U. S.

65. Cf. *Anderson v. United States*, 318 U. S. 350; *McNabb v. United States*, 318 U. S. 332.

If the unequivocal and consistent testimony of the several police officers is believed, including that of the Acting Chief of Police, the confession was clearly voluntary. The police officers were men of experience in the local detective service and, if inferences are to be indulged in, it may be inferred that they understood the necessity that the confession be uncoerced and voluntary if it was to be admissible in evidence. The principal examining officers were two detectives, one of nine and the other of eleven years' police service. The sergeant of detectives who typed the confession was a man of nine years' police service. Every policeman who took any part in the examination was called as a witness. Each testified that there was no use of force and no intimidation during the examination. Each testified that in fact the confession was uncoerced. The questioning of the accused was described as having been carried on while the parties to it were seated near a desk and not within arm's length of each other. It was conducted in the record room of the detective bureau, rather than in jail. The accused was not handcuffed nor subjected to indignities. The police, the newspaper reporter, and the iceman who was brought in to witness the accused's signature to the confession testified to the normal appearance of the clothing and person of the accused during or following the examination, including the time he was photographed. The witnesses testified only as to what they severally had observed during the respective periods that they were present but, together, they covered the entire period of the examination. If the confession was in fact voluntary, these witnesses could not have said more to prove it. If their testimony is true, it makes false much of the testimony of the accused. The testing of the credibility of this testimony is therefore important. This testimony, fur-

thermore, should not be laid aside here merely, because it is in conflict with opposing testimony. If the trial court and jury believed the police and disbelieved the accused on this testimony, there was no substantial ground left for any inference of coercion. If, on the contrary, they believed the accused and therefore concluded that the police and other witnesses agreeing with them were perjurers, the trial court could not fairly have admitted the confession in evidence.

The evidence in the record includes ample evidence to support the action taken by the trial judge and jury against the accused if this Court chooses to believe that evidence and to disbelieve the conflicting evidence. Furthermore, that evidence, if so believed, is strong and specific enough greatly to offset conflicting inferences which otherwise might be suggested to this Court by the undisputed evidence.

As a reviewing court, we have a major obligation to guard against reading into the printed record purely conjectural concepts. To conjecture from the printed record of this case that the accused, because of his known proximity to the scene of the crime and his known association that night with the boys, one of whom did the actual shooting, must have been a hardened, smart boy, whose conduct and falsehoods necessarily made all of his testimony worthless *per se*, is as unjustifiable as it would be to assume, without seeing him or his mother as witnesses, that he was an impressionable, innocent lad, likely to be panic-stricken by police surroundings and that all his testimony must be accepted as true except where expressly admitted by him to have been false. To assume from the printed record that the policemen, including the Acting Chief, and the civilians who gave unequivocal testimony as to the absence of force and intimidation in securing the confession or as to the normal appearance of the accused and of his clothing at the time

of making the confession, were callous as to the feelings of a boy 15 years of age or were guilty of deliberate perjury would be as unjustifiable as it would be to assume, without hearing and seeing the respective police officers, as witnesses, that each of them was as well-informed, tolerant and thoughtful as an ideal juvenile judge. In this case, this Court seems to have laid aside all the conflicting testimony and then, without seeing or hearing the witnesses, has attempted to draw, from the meager balance of the record, important inferences of callousness and coercion on the part of the examining officers. By disregarding the conflicting material testimony instead of choosing between the true and the false material testimony, the material record is reduced largely to isolated items of subsequent conduct on the part of certain police officers who are alleged to have hampered the boy's mother or an attorney in trying to see him several days after his confession. There is no likelihood that these officers were the same ones who conducted the examination.² It is not enough for this Court to say in its opinion today

²In a case which arose in the District of Columbia, this Court said:

"But the circumstances of legality attending the making of these oral statements are nullified, it is suggested, by what followed. For not until eight days after the statements were made was Mitchell arraigned before a committing magistrate. Undoubtedly his detention during this period was illegal. . . . Illegality is illegality, and officers of the law should deem themselves special guardians of the law. But in any event, the illegality of Mitchell's detention does not retroactively change the circumstances under which he made the disclosures. These, we have seen, were not elicited through illegality. Their admission, therefore, would not be use by the Government of the fruits of wrongdoing by its officers. Being relevant, they could be excluded only as a punitive measure against unrelated wrongdoing by the police. Our duty in shaping rules of evidence relates to the propriety of admitting evidence. This power is not to be used as an indirect mode of disciplining misconduct." *United States v. Mitchell*, 322 U.S. 65, 70-71.

that if "the undisputed evidence suggests that force or coercion was used to exact the confession, we will not permit the judgment of conviction to stand" Recognition must be given also to the right of the trial court to weigh the credibility of the material disputed evidence.

We are not in a position, on the basis of mere suspicion, to hold the trial court in error and to conclude "that this was a confession wrung from a child by means which the law should not sanction." While coercion and intimidation in securing a confession should be unequivocally condemned and punished and their product invalidated, nevertheless such coercion should not be presumed to exist because of a mere suggestion or suspicion, in the face of contrary findings by the triers of fact. On the basis of the undisputed testimony relied upon by this Court, it is not justified in making such a determination of "the callous attitude of the police" of Canton as thereby to override not only the sworn testimony of the State's public officials but also the conclusions of the triers of fact. The trial judge, with his first-hand knowledge, both of the credibility indicated by the testimony in open court and of the habitual "attitude of the police" of Canton, if there be any such attitude, found to the contrary. That judge and the law enforcement officers of Canton have been entrusted by the State of Ohio with the enforcement of the constitutional obligations of the public to each individual and also of each individual to the public. In the absence of substantial proof to upset the findings of the trial court, these public officers should not be charged with callousness toward, or with violation of, their constitutional obligations.

The legal process governing the admission of confessions in evidence in jury trials in Ohio in a case like this takes these conditions into consideration. The Ohio procedure provides for a preliminary examination by the trial judge, out of the presence of the jury, to determine

whether the confession should be excluded as involuntary. Such an examination was made at length in this case and the judge, in the absence of the jury, overruled the objection made to the confession upon such ground. The motion was renewed in the presence of the jury and again denied. The judge likewise refused to direct a verdict for Haley at the close of the State's case and again at the close of the entire case. The admissibility of the confession was fully argued in the trial court and, before its admission, the trial judge took the subject under advisement, while he adjourned the hearing over a weekend. Having decided that the confession was not to be excluded, it was his duty to submit it to the jury. He did this with ample instructions advising the jury of its responsibility in connection with the confession. Testimony then was given at length, in the presence of the jury, bearing upon the voluntariness of the confession as well as upon the probable truth or falsity of its contents. The final instructions of the court emphasized not only the obligation and opportunity of the jury to pass upon the voluntariness of the confession but also its obligation to give appropriate weight to the confession in the light of all the testimony in the event that the confession was found by the jury to have been a voluntary one.³

³ The trial court included in its final instructions to the jury the following:

"You will recall that I have heretofore said to you that, in general, the judge determines the admissibility of evidence. But, you will recall I think that on Monday just before certain alleged statements or declarations claimed by the State to have been made by the defendant, in part oral and in part consisting of an alleged written or typed statement or declaration, identified as State's Exhibit D, were by the judge permitted to be introduced with the instruction that you the jury would in the end and finally, determine first, whether the defendant made said statements and declarations, and if he did make it, whether they were made by the defendant voluntarily and of his own free will; and further in the event you should find he did make

The rule of law governing this case is stated in *Lisenba v. California*, 314 U.S. 219, 238:

"There are cases, such as this one, where the evidence as to the methods employed to obtain a con-

them and made them voluntarily and of his free will, just what weight, if any, should be accorded them.

"I now again direct your attention to that evidence. The State claims the defendant made said statements and declarations and that he made them voluntarily and of his own free will. The defendant denies the State's said claims and asserts they were not made voluntarily and of free will. You will decide these questions from all the evidence in the case. Should you find from all the evidence that the defendant did not make them, or if he made them that he did not make them voluntarily and of his free will, you will in that event disregard them entirely and not consider them further. On the other hand, should you find defendant did make them and that he made them voluntarily and of his own free will, you will consider them as evidence and give them just such weight to which you find from all the evidence they are entitled. Should you find from the evidence that some of them were made by the defendant and by him made voluntarily and of his free will, and find others were not made by him, or if made by him, not made by him voluntarily and of his free will, you will consider only those you find were made by him voluntarily and of his free will and reject the others. You will consider the alleged oral statements or declarations, separate and apart from the said written or typed statements, and the circumstances incident to each.

"You are instructed further that statements of guilt or declarations of guilt as they are sometimes called, made through the influence of hopes or fears, statements or declarations induced by promises of temporal benefit or threats of disadvantage, are to be weighed and not to be considered of any value. Statements and declarations which are not voluntary and of free will made, are excluded on the ground that they are probably not true. Another ground for the exclusion is that it is a violation of the constitutional provision that no man shall be required to give evidence against himself, for if he is compelled by threats or induced by hopes to make confession against himself, it is an indirect method of compelling him to give evidence against himself, when statements or declarations made under such circumstances are afterwards proven against him in court. On the

fession is conflicting, and in which, although denial of due process was not an issue in the trial, an issue has been resolved by court and jury, which involves an answer to the due process question. In such a case, *we accept the determination of the triers of fact, unless it is so lacking in support in the evidence that to give it effect would work that fundamental unfairness which is at war with due process.*" (Italics supplied.)

This Court properly reserves to itself an opportunity to consider the record in a case like this independently from the consideration given to that record by the lower courts. However, when credibility plays as large a part in the record as it does in this case, this Court rarely can justify a reversal of the judgment of the trial court and the verdict of the jury. This is increasingly true where the judgment of the trial court has been affirmed, as here, by two State courts of review. In the preliminary examination as to the admissibility of the confession in this case, the trial court may have believed the police and disbelieved the accused. On that basis, there is more than ample evidence to support the trial court's conclusion in refusing to exclude the confession. A similar statement may be made as to the presentation of evidence to the jury. It is not justifiable for this Court, in testing the conclusions of the triers of fact, to rely on inferences drawn solely from those portions of the record which,

other hand, a free will and voluntary statement or admission, made by a defendant against his interest, *against his interest*, is one of the most satisfactory proofs of guilt, for an innocent person will not voluntarily subject himself to infamy and liability to punishment by false statements against himself.

"The State having offered these statements or admissions, must prove that they were made; but the burden of proving that a particular statement or admission was obtained by improper inducements, in general, is upon the defendant."

when read separately, apparently were not disputed. The acceptance of one version or the other of the sharply conflicting testimony which was before the triers of fact could reasonably justify a conclusion of the trial court and jury to exclude or admit the confession without reference to, or even in spite of, implications which might be drawn from the comparatively colorless undisputed testimony if that undisputed testimony stood alone. This Court should include in its appraisal of the record not only the undisputed testimony, but it also should allow for a reasonable conclusion by the trial court and jury, based upon acceptance or rejection of the disputed testimony. On this basis, this Court is not justified, in this case, in holding that the determination by the trial judge that the confession was admissible, or that the holding by the trial jury that the confessor was guilty, "is so lacking in support in the evidence that to give it effect would work that fundamental unfairness which is at war with due process."⁴

In testing due process this Court must first make sure of its facts. Until a better way is found for testing credibility than by the examination of witnesses in open court, we must give trial courts and juries that wide discretion in this field to which a living record, as distinguished from a printed record, logically entitles them. In this living record there are many guideposts to the truth which are not in the printed record. Without seeing them ourselves, we will do well to give heed to those who have seen them.

⁴ See *Lisenba v. United States*, *supra*, p. 238.